

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DESIREE MARIE BROWN and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, San Bernardino, CA

*Docket No. 00-2661; Submitted on the Record;
Issued July 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to factors of her federal employment.

On December 2, 1999 appellant, then a 42-year-old accounting technician, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she suffered from panic attacks, anxiety, stress and major depression as a result of her federal employment. Specifically, she alleged continuous harassment, retaliation, being "singled out" for ongoing disparate treatment, ongoing monitoring of her behavior, weekly disciplinary action, counseling and threats of suspension.

In support of her claim, appellant submitted her performance rating for the period from May 1, 1998 to April 30, 1999 and further statements wherein she alleged various problems associated with her federal employment. The record also contains a November 29, 1999 notice of proposed suspension, wherein appellant's supervisor alleged, *inter alia*, that appellant had unauthorized absences for various workdays, that she exhibited rude and discourteous conduct, and that she exhibited contemptuous behavior towards authority.

By letter dated February 23, 2000, the Office of Workers' Compensation Programs requested that appellant submit further information. No response was received.

By decision dated July 10, 2000, the Office denied appellant's claim for compensation for the reason that the evidence failed to demonstrate that appellant's condition occurred in the performance of her federal duties.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes under the coverage of the Federal Employees' Compensation Act.³

The Board finds that appellant has failed to establish that she sustained an emotional condition arising out of her federal employment.

Appellant made various contentions regarding various administrative and personnel actions. She stated that she was reprimanded for allegedly not being at her workstation. Appellant also alleged that she was the victim of ongoing weekly disciplinary action from her supervisors and constant threats of suspension, all of which were without merit. She also alleged that management altered her time sheets and that her requests for transfer were ignored. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.⁴ Reactions to disciplinary matters such as suspensions or reprimands are not compensable unless it is established that the employing establishment erred or acted abusively in such capacity.⁵ The notice of suspension in the record was in response to appellant's unauthorized absences, rude and discourteous behavior, and contemptuous behavior toward management. Several specific incidents were listed in the notice of suspension. Appellant also alleged that she was suspended for refusing to attend a meeting on November 29, 1999.

¹ *Edward C. Heinz*, 51 ECAB ____ (Docket No. 99-992, issued September 12, 2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

² *Ray E. Shotwell, Jr.*, 51 ECAB ____ (Docket No. 99-2032, issued September 12, 2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Carolyn S. Philpott*, 51 ECAB ____ (Docket No. 98-760, issued November 18, 1999).

⁵ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

Although she states that the notices of suspension were without merit, and that her time sheets were altered, she has provided no independent evidence, which would show that the action taken by the employing establishment was improper. Appellant has provided no supporting evidence to verify that she was reprimanded for being absent from her workstation. Furthermore, requests for transfer,⁶ and, the monitoring of one's work by management⁷ are also administrative functions of the employer and are generally not covered. Thus, the aforementioned incidents fail to demonstrate any compensable factor of employment.

Appellant alleged that she was the victim of continuous harassment and retaliation. She also alleged that she was "singled out" for ongoing disparate treatment. Furthermore, appellant alleged that her supervisors exhibited rude and discourteous behavior towards her, including at least one occasion where her supervisor allegedly yelled at her. Actions of a claimant's supervisor or coworker, which the claimant characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did, in fact, occur.⁸ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁹ An employee's charge that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹¹ In the present case, the Board finds that appellant has not supported her allegations of harassment and discrimination with sufficient probative evidence. Furthermore, appellant has not provided support for her general contention that she worked in a hostile work environment.¹²

Finally, the Board notes that appellant has provided no supporting evidence for her allegation that a police officer was stationed outside of her office on November 29, 1999.

As appellant has not established that she sustained an emotional condition as a result of a compensable factors of employment, she has not met her burden of proof to establish that her emotional condition was sustained in the performance of duty.¹³

⁶ *James W. Griffin*, 45 ECAB 774, 778 (1994).

⁷ *Daryl R. Davis*, 45 ECAB 907 (1994).

⁸ *Sheil Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁹ *See Lorraine E. Schoeder*, 44 ECAB 323 (1992).

¹⁰ *William P. George*, 43 ECAB 1159 (1992).

¹¹ *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹² *Merriett J. Kauffman*, 45 ECAB 696 (1994).

¹³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs dated July 10, 2000 is affirmed.

Dated, Washington, DC
July 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member