

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA L. GORDON and DEPARTMENT OF THE ARMY, FORT McCOY,  
OFFICE OF THE PROVOST MARSHAL, Fort McCoy, WI

*Docket No. 99-2503; Submitted on the Record;  
Issued July 18, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

On January 15, 1998 appellant, then a 50-year-old Equal Employment Opportunity (EEO) assistant,<sup>1</sup> filed a notice of occupational disease alleging that she sustained situational adjustment reaction and depression,<sup>2</sup> with insomnia and loss of appetite due to employment factors. Appellant alleged that her participation in an investigation of her work unit on February 21, 1996 caused retaliation by Jeffrey A. Zanotti, her supervisor, and her removal from her position as a secretary to the provost marshal.

Appellant detailed her allegations in a March 27, 1998 letter. She disliked what she perceived as a high turnover rate in her office, felt that Mr. Zanotti's management style was harsh and disagreed with the way he spoke to or about her coworkers. Appellant also alleged that she was denied desired assignments, training trips and promotions, that she was retaliated against by Mr. Zanotti for testifying at a coworker's compensation hearing on June 17, 1997, that he did not properly consult union officials during a reorganization and that certain items were improperly omitted from or included in a property book.

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<sup>1</sup> Appellant voluntarily transferred to the EEO position on November 24, 1997, as part of a settlement agreement. Prior to August 1997, appellant was a secretary in the provost marshal's office for approximately eleven years.

<sup>2</sup> In an August 30, 1996 report, Dr. James Wilde, an attending Board-certified internist, noted that appellant presented on August 26, 1996 "because of an episode of anxiousness, tremulousness and transiently, rather elevated blood pressures ... [i]t seems likely that this episode was a function of situational anxiety that was the result of a conflict between [appellant] and her supervisor at her place of work." Dr. Wilde diagnosed a situational adjustment reaction and depression. In a December 19, 1997 form report, he submitted treatment notes dated January 2 to February 6, 1998, generally supporting a causal relationship between the alleged harassment, appellant's removal from her position in August 1997 and the diagnosed depression and adjustment disorder.

Appellant alleged that on December 4, 1995 Mr. Zanotti directed her to prepare a list of employees birth dates. She gave him a list, which gave name, day and month to be used to send employee birthday wishes. Appellant alleged Mr. Zanotti commented that too many employees were “overweight and old” and instructed her to put the birthday list on a spreadsheet and add the birth year. Mr. Zanotti allegedly identified seven employees whom he wished to remove from employment due to age, weight or disability. Appellant submitted a copy of the spreadsheet, dated December 4, 1995, showing employee birth dates, including the year of birth.

In a March 3, 1998 statement, Mr. Zanotti denied appellant’s allegations of harassment, retaliation and abuse.

In a March 9, 1998 letter, appellant alleged that her assigned duties as an EEO assistant caused her stress as the allegations she had to process reminded her of alleged harassment and retaliation by Mr. Zanotti.

In a January 15, 1998 report, Dr. Steven A. Stvertka, an attending clinical psychologist, related appellant’s account of anxiety over her transfer to the EEO position and her allegations of hostility and abuse by Mr. Zanotti.

In a February 27, 1998 report, Dr. Stvertka stated that appellant did not allege that she was harassed in her current EEO position, but that “listening to complaints and allegations of harassment” brought back “recollections of her own personal experiences” and that these recollections were “highly upsetting to her and have continued to contribute to depression and difficulty with coping and performance.”<sup>3</sup> Dr. Stvertka amplified this opinion in a March 3, 1998 report, explaining that appellant’s assigned duties of documenting and responding to “allegations of harassment and other employment related improprieties” caused stress contributing to her emotional condition. Dr. Stvertka recommended that appellant be transferred to a “less stressful” position.<sup>4</sup>

In an April 20, 1998 statement, Mr. Zanotti again denied appellant’s allegations. He confirmed that he directed appellant to prepare the birth date list, but that he only wished to have the information so that he could send birthday greetings to the employees.

By decision dated July 24, 1998, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that she had failed to allege a compensable factor of employment. She disagreed with this decision and in an August 14, 1998 letter, requested an oral hearing before a representative of the Office’s Branch of Hearings and Review, held March 17, 1999. At the hearing, appellant reiterated her allegations of harassment, retaliation and wrongdoing by Mr. Zanotti, including preparation of the birth date list. She submitted additional evidence.

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<sup>3</sup> The record contained appellant’s April 8, 1998 grievance forms regarding her transfer from the provost marshal’s office, alleging that it was in retaliation for her statement to investigators in February 1996. There is no final EEO decision of record regarding this grievance.

<sup>4</sup> Dr. Stvertka reiterated these opinions in a March 9, 1999 report, adding that appellant had no psychiatric history prior to approximately December 1997.

In an undated March 1998 letter, Allen D. Rue, an employing establishment personnel official, stated that as the employing establishment was undergoing a “major reorganization,” there was no available position for appellant commensurate with her skills and experience, other than the EEO position she currently held.

In a February 1, 1999 letter, Dr. Stvertka opined that there were “a number of aspects of [appellant’s] job and responsibilities in the EEO office, which serve as a continual reminder to [appellant] of her own grievance related issues.... [H]aving to deal with the grievances of others continues to be emotionally distressing for her.... [Appellant] is directly exposed to the complaints of others both through telephone contact, in writing and occasionally in person.” Dr. Stvertka stated that these exposures contributed “to emotional anxiety and some depression.” He again recommended that appellant be transferred to another position.<sup>5</sup>

By decision dated and finalized April 29, 1999, the Office hearing representative affirmed the Office’s July 24, 1998 decision, finding that appellant had failed to establish a compensable factor of employment. The hearing representative found that appellant had failed to substantiate her claims of harassment, abuse or retaliation and that her desire to return to her previous position at the provost marshal office was not compensable.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

Where a claimed disability results from an employee’s emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>6</sup> When working conditions are alleged as factors in causing an emotional condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>7</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>8</sup>

Appellant attributed her emotional condition in part to harassment, abuse and retaliation by her superiors. However, the Board finds that appellant has not established these allegations as factual. The Board notes that unfounded perceptions of harassment do not constitute an

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<sup>5</sup> Dr. Stvertka also stated this opinion in March 13, 27 and June 19, 1998 reports.

<sup>6</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>7</sup> *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>8</sup> *Id.*

employment factor and that mere perceptions are not compensable under the Act.<sup>9</sup> In the present case, appellant has not submitted sufficient evidence, such as witness statements, to support the alleged incidents of harassment. Accordingly, the Board finds that appellant has failed to substantiate her claims of harassment.

The Board also finds that appellant's dislike of Mr. Zanotti's management style, the turnover rate in her office, her frustration over not being promoted or being given desired assignments, and her desire to return to her position in the provost marshal's office, are self-generated reactions not considered to be in the performance of appellant's assigned duties.<sup>10</sup> Similarly, the Board finds that appellant's anxiety over performing the duties of an EEO claims processor on and after November 24, 1997 was a self-generated reaction not within the performance of duty. Appellant asserted that speaking with EEO claimants and reading their allegations reminded her of the alleged harassment and retaliation which occurred while she worked for Mr. Zanotti. However, appellant submitted insufficient evidence to establish that she was in fact harassed or retaliated against while under Mr. Zanotti's supervision. Thus, she has failed to establish a compensable factor of employment in this respect.

Appellant also attributed her condition to harassment and discrimination in December 1995 by Mr. Zanotti in directing her to prepare a birthday list of the employees under his supervision. She alleged that Mr. Zanotti commended that many people on the list were old and overweight. In his April 20, 1998 statement, Mr. Zanotti confirmed that he requested appellant to prepare a birthday list. He denied appellant's allegation that the birthday list constituted a "hit list" of employees to be terminated due to their age, stating that the list was a reminder to congratulate employees on their respective birthdays. The Board finds that appellant has not submitted evidence sufficient to establish her allegations that Mr. Zanotti directed the preparation of the birthday list in order to discriminate against her coemployees.

Consequently, appellant has not established that she sustained an emotional condition in the performance of duty, as she failed to establish any compensable factor of employment.

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<sup>9</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>10</sup> *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 6.

The decision of the Office of Workers' Compensation Programs dated and finalized April 29, 1999 is hereby affirmed.

Dated, Washington, DC  
July 18, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member