

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. CASTILLO and DEPARTMENT OF THE AIR FORCE, AIR TRAINING COMMAND, 37TH CIVIL ENGINEER SQUADRON, LACKLAND AIR FORCE BASE, Lackland, TX

*Docket No. 00-1749; Submitted on the Record;
Issued June 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On July 12, 1999 appellant, then a 40-year-old office automation clerk, filed a claim for stress and "severe depression" which she attributed to the stress of being denied a permanent promotion. Appellant explained that she had been detailed from June 1997 to November 1998 when Lorrain Montague, a coworker, could no longer perform the job due to lung cancer. Appellant alleged that during the detail she had to perform all of Ms. Montague's duties as well as her assigned duties in the GS-4 position. When Ms. Montague passed away in November 1998, appellant sought a permanent promotion to the GS-5 position and "repeatedly" asked Leo Marshall, her supervisor, why she "could not be given the Secretary position permanently since [she] had filled it for so long."

Mr. Marshall allegedly stated that this was not possible as the GS-5 position would be moved elsewhere in the division and appellant would then take over "all duties in the office." When appellant's temporary promotion expired in November 1998, Mr. Marshall informed appellant that she "would have to continue to perform the duties" of both the automation clerk and secretary positions but would not be promoted. Appellant then filed an Equal Employment Opportunity (EEO) complaint.¹

By decision dated October 25, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had not established that the claimed emotional condition occurred in the performance of duty. The Office accepted as factual, but not compensable, that appellant was detailed to Ms. Montague's position from November 17, 1997

¹ The employing establishment asserted that nonoccupational stressors in appellant's personal life concerning a real estate purchase, a relationship and the birth of a child contributed to the alleged emotional condition.

to November 16, 1998 and temporarily promoted to GS-5, performing both her duties and Ms. Montague's duties. After Ms. Montague died in 1998, appellant was "downgraded back to a GS-4 ... [and] told that [she] would continue the duties of both positions because the [employing establishment] needed only one of the positions filled."

The Office found that the circumstances of appellant's reassignment and change of duties were administrative matters not within the performance of duty and that there was no evidence of any error or abuse by the employing establishment. The Office further found that appellant's frustration over not being promoted was self-generated and not considered within the performance of duty.

Appellant disagreed with this decision and in a January 11, 2000 letter requested reconsideration. She submitted additional evidence, including reports from a Board-certified psychiatrist and an attending physiatrist.

By decision dated January 26, 2000, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its October 25, 1999 decision.

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to employment. Where disability results from an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the Federal Employees' Compensation Act's coverage.² As part of its adjudicatory function, the Office 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.³ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴

In this case, appellant attributed her claimed emotional condition in part to overwork from being made to perform the duties of both her GS-4 job and Ms. Montague's GS-5 position from November 17, 1997 to November 16, 1998. The Board has held that overwork may be a

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *See Barbara Bush*, 38 ECAB 710 (1987).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

compensable factor of employment.⁵ The evidence in this case, however, is insufficient to establish that appellant was in fact overworked.

The employing establishment submitted two supervisory statements demonstrating that appellant was not overworked while detailed to Ms. Montague's position. In a September 17, 1999 statement, Senior Master Sergeant Michael A. Smith stated that appellant had done a "fine job" and had worked no overtime. In an October 4, 1999 memorandum, Major Robert E. Hill stated that appellant was not required "to work two positions," did not complain of any difficulty in performing her assigned duties, worked no overtime, "used all of her sick and annual leave, and was able to keep up with her workload." He explained that office automation had reduced the clerical workload so that there was not "enough work to keep two administrative workers ... [or] ... even one person fully employed eight hours a day." The Board finds that these statements are sufficiently detailed and consistent to refute appellant's allegations of overwork. Therefore, appellant has failed to establish a compensable factor of employment in this regard.

Appellant also attributed her emotional condition to frustration over being denied a permanent promotion to the GS-5 secretarial position. She asserted that she should have been promoted as she had performed some or all of Ms. Montague's duties from June 1997 to November 1998. However, emotional conditions resulting from an employee's desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁶ Thus, appellant's frustration over not being given Ms. Montague's position is not compensable.

Also, the granting of promotions is an administrative function of the employer and not the duty of the employee.⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁸

Appellant has not submitted sufficient evidence in corroboration of her claim to establish that the employing establishment erred or acted abusively with regard to ending her detail or denying the promotion.⁹ Thus, appellant has not established a compensable employment factor

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

⁶ *Raymond S. Cordova*, 32 ECAB 1005 (1981); *Lillian Cutler*, *supra* note 2.

⁷ *Id.*

⁸ *See Richard Dube*, 42 ECAB 916 (1991).

⁹ The Board notes that the record indicates that appellant filed an EEO complaint when informed she would not be promoted. However, there are no documents of record relating to this complaint or its resolution.

under the Act.¹⁰ Because appellant failed to establish any compensable factors of employment the medical record need not be considered.¹¹

The January 26, 2000 and October 25, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.¹²

Dated, Washington, DC
June 7, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹¹ *Margaret S. Krzycki*, 43 ECAB 384 (1992).

¹² On appeal, appellant submitted new evidence, including a December 15, 1999 EEO settlement agreement, and a November 9, 1999 notice of reassignment. This evidence was not part of the case record at the time the Office issued the final decision in this case on January 26, 2000. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).