

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON B. PARSONS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Jamaica, NY

*Docket No. 00-2413; Submitted on the Record;  
Issued June 20, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's May 20, 2000 request for reconsideration.

On August 11, 1999 appellant, then a 38-year-old benefits authorizer, filed an occupational disease claim for a "chronic mental/anxiety disorder" which she attributed to financial difficulties, being evicted from her apartment on May 7, 1996, legal problems with a landlord and a credit union,<sup>1</sup> mental and physical illnesses involving her mother and children, an April 17, 1999 car accident,<sup>2</sup> being suspended from her job in August 1999 for criminal misconduct,<sup>3</sup> and choosing a health insurance plan that was too expensive.

Appellant submitted medical evidence in support of her claim. She was hospitalized from February 5 to 10, 1998 for psychiatric treatment and again from October 4 to November 2, 1999. In an October 4, 1999 hospital summary sheet, Dr. Ronald Rosenberg, a psychiatrist, diagnosed paranoid personality disorder and psychosis. He noted appellant's financial difficulties and her account of harassment by supervisors at work. In a November 2,

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<sup>1</sup> The record contains pleadings from appellant's action against Xcel Federal Credit Union, in the United States District Court of the Eastern District of New York.

<sup>2</sup> The record contains police reports and a summons concerning April 17, 1999 traffic accident in which appellant's car struck another vehicle, killing a passenger in that vehicle.

<sup>3</sup> There are also documents from the New York State Office of Temporary and Disability Assistance and November 1999 documents relating to appellant's (MSPB) Merit Systems Protection Board action against the employing establishment

1999 discharge summary, Dr. McLean, a psychiatrist, diagnosed psychosis and noted that appellant's concerns were "partly reality based and partly delusional."<sup>4</sup>

In a November 17, 1999 letter, the employing establishment controverted appellant's claim, as she did not file her claim until after she was "placed on administrative leave effective August 4, 1999," with indefinite suspension commencing August 31, 1999, after an investigation "found her to be engaging in criminal activity by selling information obtained from Social Security records to unauthorized parties" involved in credit card fraud.

In a December 15, 1999 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim. The Office explained that the factors she alleged, including her May 1996 eviction, difficulties with her bank and landlord, the federal furlough, lawsuits, financial difficulties, family health problems, the April 1999 car accident and her "criminal activity at work," were not in the performance of duty.

In a December 21, 1999 letter, appellant asserted that when she was promoted from a GS-5 to GS-7 in 1989, Andrea Kaplan, her training supervisor, harassed her and assigned her an incompetent mentor "to prevent [appellant] from learning [her] new job position." Appellant alleged that, in late November 1989, Ms. Kaplan sought to demote her because she is African-American. She also alleged that supervisor Sara Lee gave her an unfavorable write-up, later removed from her record by supervisor Lil Bardon. She asserted that, in a session with employee assistance counselors, Bryan Quinn and Charlotte Allen, she was "coerced into signing a document which gave the U.S. Government a right to tamper with [her] brain."

Appellant also described an assembly in an auditorium where "the lights went out and a camera flashed into [her] brain. Then a movie was put on about being suicidal" and she realized that a supervisor "illegally tampered with [her] brain." She alleged that on May 27, 1990 supervisors Michael Cala and John Bambino argued with her regarding a letter she had written about alleged favoritism in the promotion of coworker Juanita Stowell and she left work.

On May 28, 1990 appellant alleged that Mr. Cala contacted Ms. Bardon, who tricked appellant "into purchasing a solution instead of a regular drink from the government's lunchroom" and that Mr. Quinn then "activated [her] brain by stating ... 'Meet and Deal,' then interrogated her for twelve hours about "other black employees and other black supervisors." Appellant also accused Mr. Bardon of striking her and "tickling [her] brain" during the alleged interrogation. She was then admitted to the hospital for three weeks and was off work for approximately eight months. Upon appellant's return to work in January 1991, she alleged that Ms. Allen caused her to "revert into a 4 year old," that she had been functioning as a four-year-old child until her October 4, 1999 hospitalization. Appellant also alleged she was visited by a secret agent from the employing establishment on August 4, 1999.

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<sup>4</sup> In an October 27, 1999 report, Dr. B. Chuang, a psychiatrist, noted diagnoses based on an August 31, 1999 psychiatric evaluation of dysthymic and psychotic disorders, a "history of cocaine abuse," and paranoid personality disorder.

In a January 11, 2000 letter, the employing establishment stated that “during the furlough in December 1995,” appellant “was paid according to the same schedule as every other employee ... [with] no events or errors unique to [her].”<sup>5</sup>

By decision dated May 4, 2000, the Office denied appellant’s claim on the grounds that performance of duty was not established. The Office found that the 1995 to 1996 government furlough was an administrative matter not within the performance of duty and no error or abuse had been established. The Office further found that the April 1999 car accident and errors made by appellant’s bank and federal credit union regarding a one-week pay delay caused by the furlough were not related to her employment. The Office also found that she had not established as factual that Ms. Kaplan harassed her in 1989, that Ms. Bardon struck her in 1990, or that “supervisors or managers illegally tampered with [appellant’s] brain” from 1989 to 1991.

Appellant disagreed with this decision and in a May 20, 2000 letter requested reconsideration. She alleged that the Office denied her claim due to pending criminal drug charges against her, which she asserted were false. Appellant also stated that additional medical evidence would be forthcoming. However, the record demonstrates that no additional evidence was submitted prior to the issuance of the Office’s July 7, 2000 decision.<sup>6</sup>

By decision dated July 7, 2000, the Office denied reconsideration on the grounds that the May 20, 2000 letter, the only evidence submitted in support of her request for reconsideration, was irrelevant to her claim and did not raise any substantive legal questions. The Office explained that appellant’s claim was not denied “on the basis that [she was] a drug abuser,” but because she “did not implicate any compensable” employment factors. The Office noted that the May 4, 2000 decision did not mention drug abuse and the Office was unaware of the charges until appellant raised the issue.

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 an employee’s employment. Where the disability results from an employee’s emotional reaction to employment matters but such matters are not related 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 scope of coverage of the Act.<sup>7</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard.

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<sup>5</sup> In a March 1, 2000 letter, Sheryl Gulley, a friend of appellant’s acting as her representative, stated that appellant was on public assistance and food stamps, that her daughter had a chronic cardiac condition and her house was being foreclosed, causing a worsening of her emotional condition. Ms. Gulley noted that drug charges against appellant had been placed on the long docket, with one year given to file a plea and that, therefore, appellant should be given additional financial relief.

<sup>6</sup> Appellant sent one copy of the May 20, 2000 letter to the Office’s Branch of Hearings and Review, but did not request a hearing.

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

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.<sup>8</sup>

Appellant attributed her condition to being suspended from the employing establishment in August 1999 due to her criminal activities of selling Social Security records to persons involved in credit card fraud. However, disciplinary actions are not considered to be in the performance of duty.<sup>9</sup> The Board has held that these disciplinary actions relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.<sup>10</sup> 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.<sup>11</sup> Appellant has not submitted sufficient evidence in corroboration of her claim to establish that the employing establishment erred or acted abusively with regard to the reprimands. Thus, she has not established a compensable employment factor under the Act in this respect.<sup>12</sup>

Appellant also attributed her condition, in part, to errors in pay due to the 1995 to 1996 federal furlough. The Board finds that the furlough was an administrative matter not within the performance of duty. Also, the employing establishment stated that "during the furlough in December 1995," appellant "was paid according to the same schedule as every other employee ... [with] no events or errors unique to [her]." Appellant submitted no evidence substantiating error or abuse by the employing establishment regarding her pay. Therefore, she has not established a compensable employment factor in this respect.

Similarly, the Board finds that appellant's choice of a health plan was an administrative matter not within the performance of duty, with no error or abuse shown.

Appellant has also alleged a pattern of harassment from the employing establishment, in particular, Ms. Kaplan, her training supervisor in 1989. In order to establish compensability under the Act, however, there must be evidence that harassment did in fact occur. The Board notes that unfounded perceptions of harassment do not constitute an employment factor and that mere perceptions are not compensable under the Act.<sup>13</sup> In the present case, appellant has not submitted sufficient evidence to support the alleged incidents of harassment. Accordingly, the Board finds that appellant has failed to substantiate her claims of harassment.

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<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>9</sup> *See Larry D. Passalacqua*, 32 ECAB 1859 (1981).

<sup>10</sup> *See Jimmy Gilbreath*, 44 ECAB 555 (1993).

<sup>11</sup> *See Richard Dube*, 42 ECAB 916 (1991).

<sup>12</sup> *See Frederick D. Richardson*, 45 ECAB 454 (1994).

<sup>13</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

Regarding appellant's allegations that various supervisors tampered with her brain, forced her to drink a truth serum, that Ms. Bardon struck her, or that Ms. Allen caused her to regress to the mental state of a four year old, appellant failed to submit corroborating evidence. The Board has considered the lack of corroboration and concluded that appellant has submitted insufficient evidence to sustain her allegations of events.<sup>14</sup>

The Board finds that the May 1996 eviction, April 1999 car accident, health problems of her mother and children and financial difficulties are personal matters unrelated to her federal employment and, therefore, do not fall within the coverage of the Act.

The Board notes that, in a December 15, 1999 letter, the Office advised appellant that she had not yet alleged a compensable factor of employment and described in detail the additional evidence necessary to establish her claim. However, appellant did not submit such evidence.

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.

Regarding the second issue, the Board finds that the Office in its July 7, 2000 decision properly denied appellant's request for reconsideration on its merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under section 8128.<sup>15</sup>

Under section 8128(a) of the Act,<sup>16</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>17</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that the Office erroneously applied or interpreted a point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office;  
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”<sup>18</sup>

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<sup>14</sup> See *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Mary N. Kolis*, 25 ECAB 53 (1973).

<sup>15</sup> See 20 C.F.R. § 10.606(b)(2)(i-iii).

<sup>16</sup> 5 U.S.C. § 8128(a).

<sup>17</sup> 20 C.F.R. § 10.606(b)(1999).

<sup>18</sup> 20 C.F.R. § 10.606(b)(1)(1999).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>19</sup>

The only evidence appellant submitted in support of her May 20, 2000 request for reconsideration were letters alleging that the Office denied her claim due to her pending criminal drug charges. These letters do not demonstrate that the Office erred in applying or interpreting the law, or present new and relevant evidence or legal argument.<sup>20</sup> Therefore, the Office's July 7, 2000 decision, denying appellant's May 20, 2000 request for reconsideration, was proper.

The July 7 and May 4, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
June 20, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>19</sup> 20 C.F.R. § 10.608(b).

<sup>20</sup> The Board notes that in its July 7, 2000 decision, the Office stated that the criminal charges had no bearing on appellant's case and that the Office was unaware of such charges until appellant raised the issue on reconsideration.