

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY A. KIER and DEPARTMENT OF THE AIR FORCE,
WRIGHT-PATTERSON AIR FORCE BASE, OH

*Docket No. 00-454; Submitted on the Record;
Issued March 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition, hypertension or other condition causally related to compensable work factors.

On December 17, 1997 appellant, a 29-year-old employee relations specialist, filed an occupational disease claim alleging that she sustained hypertension and adjustment disorder with mixed anxiety and depressed mood, causally related to stress at work. In an accompanying statement, she indicated that side-effects from blood pressure medication had resulted in difficulty in arriving at work on time; disciplinary action had been taken by the employing establishment.

In a decision dated April 28, 1998, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not substantiated compensable work factors as contributing to an injury. In a decision dated August 24, 1999, the Office denied modification of its prior decision.

The Board finds that appellant has not established an injury causally related to compensable work factors.

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

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

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 the 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 the 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 secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

The record indicates that appellant received two suspensions in 1997 due to repeated tardiness, absence from work and negligent performance of duties. Disciplinary actions by the employing establishment are not compensable under the Act unless it is demonstrated that the employing establishment erred or acted abusively in its administrative capacity.⁴

Appellant has not presented probative evidence to show that the disciplinary actions were erroneous or abusive. She did file an informal Equal Employment Opportunity (EEO) complaint regarding the initial suspension; on July 14, 1997, a settlement agreement was signed. According to the agreement, appellant would be given a 60-day probationary period to improve her performance and attendance. If she did so, the 14-day suspension would be reduced to a 7-day suspension. The agreement stated that its provisions did not constitute an admission by the employing establishment of violation of any statute or regulation.⁵

The Board finds no probative evidence of abuse or error by the employing establishment in this case. There are no findings of error, no admission of error and no other probative evidence sufficient to establish a compensable factor with respect to disciplinary actions.

Appellant has used the term "harassment" to describe the actions of the employing establishment with respect to tardiness and use of leave. The Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or

² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁴ *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Joe E. Hendricks*, 43 ECAB 850 (1992).

⁵ The reduction of a proposed suspension does not in itself establish error or abuse by the employing establishment. *Richard J. Dube*, 42 ECAB 916 (1991).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

discriminated against is not determinative of whether or not harassment occurred.⁷ While an informal EEO complaint was filed, no findings of harassment were made and there is insufficient evidence of record to establish a claim based on harassment in this case.

Appellant submitted a request for reconsideration dated March 17, 1999 in which she stated that she had an unreasonable and unattainable workload that aggravated her condition. Although overwork may be a compensable work factor, the allegation must be substantiated by the evidence.⁸ The Board notes that appellant did not clearly describe her workload or the specific deadlines or quotas that she faced or otherwise fully explain her allegation of overwork. She submitted evidence regarding staffing changes made in her office, but this evidence does not address appellant's own workload. Moreover, the employing establishment submitted supervisor statements indicating that any changes made were not due to an unreasonable workload.

The Board accordingly finds that appellant has not alleged and substantiated a compensable work factor in this case. Since she has not established a compensable work factor, the Board will not address the medical evidence.⁹

The decision of the Office of Workers' Compensation Programs dated August 24, 1999 is affirmed.

Dated, Washington, DC
March 9, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

⁸ See *Robert W. Wisenberger*, 47 ECAB 406 (1996); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).