

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTINE N. HAKE and DEPARTMENT OF THE AIR FORCE,  
CANNON AIR FORCE BASE, NM

*Docket No. 00-516; Submitted on the Record;  
Issued March 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration of the merits.

On April 2, 1997 appellant, then a 30-year-old environmental engineer and program manager, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on February 13, 1997 she first became aware of depression and anxiety and realized that they were work related. In a statement dated April 2, 1997, appellant noted that when she first arrived at the employing establishment she was overworked and that "no continuity books" were provided regarding job details. She noted that in mid-September 1995 she took approximately two weeks of leave due to the "hostile work environment, lack of supervisory support and overwork." Appellant alleged that stress was due to a hostile working environment caused by Suzanne Bilbrey, Chief, Environmental Flight, Richard D. Crow, Acting Chief, Conservation Section, Daniel D. Barnett, Chief, Pollution Prevention and Jennifer Lee Putz, Chief of Compliance. As to the cause of her current emotional condition, appellant stated that "the catalyst for my charges" occurred on January 7, 1997 when she was "verbally assaulted during a feedback session" on her performance by her supervisors, Ms. Bilbrey and Mr. Crow. She also alleged that she was subjected to harassment, discrimination, unfair labor practices and reprisal actions. Lastly, appellant stated that her emotional and physical health began to decline "as a direct result of the increasing hostility within my workplace."

By decision dated March 26, 1998, the Office denied appellant's claim on the basis that the evidence was insufficient to establish any compensable work factors.

In a letter dated March 24, 1999, appellant's counsel requested reconsideration and submitted evidence in support of her request.

In a merit decision dated May 19, 1999, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to establish a

compensable factor of employment. The Office also rejected her new argument that her stress was due to overwork as she denied this in her original statement.

In a letter dated July 28, 1999, appellant requested reconsideration.

On November 3, 1999 the Office denied appellant's request for a merit review on the basis that the arguments were repetitious and no new evidence was submitted.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

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 employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a 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>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When 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>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated March 25, 1998, May 19 and November 2, 1999, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of her supervisors and coworkers contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>7</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>8</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.<sup>9</sup> Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.<sup>10</sup> Thus, she has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding appellant's allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act.<sup>11</sup>

Regarding appellant's allegations of poor management, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>12</sup>

The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under the Act unless the

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<sup>7</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>8</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>9</sup> *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>10</sup> *See William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>11</sup> *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>12</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

refusal constitutes error or abuse.<sup>13</sup> Appellant did not, however, submit any evidence to show that the employing establishment committed error or abuse with regard to such administrative matters. Thus, she has not established a compensable employment factor under the Act with respect to these matters.

Regarding appellant's claim that she was overworked and undersupervised, the Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>14</sup> In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy work load and imposition of unreasonable deadlines. In the instant case, however, appellant has not factually established that she was overworked in September 1995 when she initially started her position as she provided no supporting documentation. Furthermore, appellant in her CA-2 form indicated that she only first became aware of her depression and anxiety on February 13, 1997, the same date that she realized that her disability was due to work factors. Consequently, these conditions are not related to an accepted employment condition or injury and are, therefore, not compensable under the Act.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>15</sup>

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration of the merits

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>16</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>17</sup>

In her July 28, 1999 letter requesting reconsideration, appellant did not submit any relevant and pertinent new evidence not previously considered by the Office and did not argue

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<sup>13</sup> *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

<sup>14</sup> *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>15</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>16</sup> 20 C.F.R. § 10.606(b)(2) (1999)

<sup>17</sup> 20 C.F.R. § 10.608(b) (1999).

that the Office erroneously applied or interpreted a specific point of law. Nor did she advance a point of law or fact not previously considered by the Office. Appellant merely restated her opinion that her stress was due to employment factors including that she was overworked, undersupervised and subjected to a hostile work environment. Therefore, the Office properly denied her request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated November 2 and May 19, 1999 are hereby affirmed.

Dated, Washington, DC  
March 27, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member