

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY L. DAVIS and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Washington, DC

*Docket No. 00-1511; Submitted on the Record;
Issued May 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition or consequential physical injury causally related to compensable work factors.

On November 18, 1998 appellant, a 47-year-old special agent unit chief, filed a claim alleging that she sustained stress, with resulting headaches, nausea and high blood pressure, as a result of her federal employment. She stated on the claim form that a "racially/sex charged environment" was created and perpetuated by senior management. Appellant added that she had been subject to racial and gender discrimination and harassment from her supervisors. According to her, management undermined her efforts, refused to provide necessary resources to accomplish her mission, provided resources to others to give them the appearance of effectiveness, and permitted coworkers to express false and misleading information about appellant.

In a decision dated March 10, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established compensable work factors as contributing to an injury. By decision dated December 9, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established an injury in the performance of duty.

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

A review of the record indicates that appellant has not provided probative evidence to establish her claim of discrimination or harassment. Appellant submitted a settlement agreement, signed on January 26, 1993, in which she was one of the named plaintiffs representing all of the African-American special agents at the employing establishment. The agreement stated that it was not intended to constitute an admission of any violation of law, regulation or policy. Moreover, the agreement does not discuss the specific allegations raised by appellant; the employing establishment agreed to undertake certain actions in the hiring and promotion of African-American personnel, without addressing appellant's allegations. The Board finds that the settlement agreement does not constitute probative evidence in support of appellant's claim.

Appellant also submitted a witness statement from a coworker asserting that he was aware of systematic discrimination by the employing establishment. The coworker does not discuss the specific allegations made by appellant or demonstrate that he witnessed specific incidents of discrimination against appellant. The Board notes that the record contains statements from appellant's supervisors denying the allegations of discrimination.

The Board finds that, based on the evidence of record, appellant has not substantiated a compensable work factor in this case. Appellant indicated in a September 16, 1999 letter that she had filed an Equal Employment Opportunity (EEO) complaint, but the record contains no findings of discrimination or other probative evidence. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁴

The Board also notes that the record contains a decision of the Office on the issues presented in this case that was issued after appellant filed her appeal to the Board on March 7, 2000. It is well established that the Board and the Office may not have concurrent

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

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

⁴ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

jurisdiction over the same case and those Office decisions which change the status of the decision on appeal are null and void.⁵

The December 9 and March 10, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
May 22, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Douglas E. Billings*, 41 ECAB 880, 895 (1990). Any evidence that was submitted after the December 9, 1999 Office decision cannot be reviewed by the Board on this appeal. See 20 C.F.R. § 501.2(c).