

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. GONZALEZ and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT AUDIT AGENCY, La Miarda, CA

*Docket No. 00-1636; Submitted on the Record;
Issued May 21, 2001*

DECISION and ORDER

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

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

On April 17, 1998 appellant, then a 55-year-old senior auditor, filed a claim for major depression. She attributed her condition to meetings with her branch manager that were very intimidating, conflicting instructions from the branch versus the regional managers and working late or all night to complete projects. Appellant stopped work on March 26, 1998.

By decision dated July 13, 1998, the Office of Workers' Compensation Programs found that fact of injury was not established and that the medical evidence was insufficient to establish appellant's claim. On July 24, 1998 the Office vacated this decision on the basis that the evidence requested by the Office in a May 5, 1998 letter to appellant was received but not considered before the July 13, 1998 decision. This evidence included another statement from appellant further describing work incidents and conditions, a medical report dated July 6, 1998 from Dr. Samuel H. Albert, a Board-certified psychiatrist, and statements from coworkers. By letter dated July 24, 1998, the Office requested that the employing establishment comment within 30 days on appellant's statements on employment factors.

By decision dated April 14, 1999, the Office found that appellant's claimed emotional condition was not related to employment factors. Appellant requested a hearing and submitted a statement dated August 16, 1999 from her regional manager. At the hearing on August 30, 1999, appellant described incidents of her employment to which she attributed her emotional condition. By decision dated October 13, 1999, an Office hearing representative found that appellant had not established that any incidents occurred in the performance of duty.

The Board initially finds that appellant has substantiated compensable factors of employment.

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 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.

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 his frustration from not being permitted to work in a particular environment or to hold a particular position.¹ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.² Where appellant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.³

Appellant's primary allegation is that her branch manager, Richard Dodd, was abusive to her in meetings with contractors.⁴ She provided several examples of such abuse. One incident cited by appellant occurred at a meeting in January 1997 at which, according to Mr. Dodd asked appellant to state the purpose of her audit, appellant's regional supervisor, Dennis Tisdale, attempted to answer and Mr. Dodd stopped him angrily, pointed his finger at appellant and said loudly, "I want her to answer the question."

In a statement dated August 16, 1999, Mr. Tisdale corroborated appellant's account of this meeting, stating that Mr. Dodd pointed his finger in appellant's face and shouted "What is the audit objective?" twice. When he attempted to answer the question, Mr. Dodd raised his voice and said he wanted to hear from appellant. Mr. Tisdale added other details of this meeting, stating that appellant's explanation of the audit was repeatedly interrupted by sarcastic remarks by Mr. Dodd and that at the end of the meeting Mr. Dodd yelled at appellant, "You are an embarrassment to this office."

Mr. Tisdale also stated that at another meeting Mr. Dodd said he had no faith in appellant's audit or in the auditor. This corroborates appellant's account of a meeting at which Mr. Dodd, in the presence of Mr. Tisdale, belittled appellant's audit and embarrassed her in front of a contractor.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Michael Thomas Plante*, 44 ECAB 510 (1993).

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁴ While attending such meetings was a requirement of appellant's employment, appellant is not alleging that her attendance at meetings resulted in her depression, but attributed her emotional condition to the abuse to which the branch manager subjected her.

The corroboration by Mr. Tisdale, which included a statement that Mr. Dodd was hostile and demeaning to appellant at yet another meeting, establishes that Mr. Dodd's verbal abuse of appellant did not consist of an isolated comment.⁵ There is no evidence that appellant was the abusive party⁶ or that she even had an active role in creating the confrontational atmosphere.⁷ The substantiated pattern of verbal aggression by Mr. Dodd toward appellant was unreasonable conduct⁸ and constitutes a potentially compensable factor of employment.⁹

There is no reason to disbelieve appellant's other allegations of verbal abuse by Mr. Dodd, especially in light of the corroboration of specific incidents by Mr. Tisdale. An employee's statement that an injury or incident occurred at a given time, place and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰ The Office twice requested that the employing establishment address the allegations but did not receive any response refuting any of appellant's statements. Where evidence is clear, uncontradicted and unequivocal and nothing appears in such evidence or from other evidence which would tend to discredit it, the evidence does have probative value and if no impelling reason exists for disbelieving such evidence, it is sufficient to establish the fact of an incident.¹¹

Thus, the Board finds that appellant, through her uncontradicted statements, has established that Mr. Dodd yelled at her about the margins in a report and yelled at her and agreed with a contractor that her audit was ridiculous and stupid in an operations audit meeting. She also received contradictory instructions from the branch office versus the regional managers on at least the two specific occasions that she cited. A coworker substantiated that guidance from the region was overwritten by Mr. Dodd. Several coworkers corroborated that appellant sometimes worked weekends and evenings to complete her work.

While appellant has identified and substantiated compensable factors of employment, she has not discharged her burden of proof. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to accepted compensable employment factors.¹²

⁵ See *Christophe Jolicoeur*, 49 ECAB 553 (1998) (The Board noted that verbal altercations with supervisors may constitute compensable factors of employment, but found that the claimant had not explained how an isolated comment containing a curse word would rise to the level of verbal abuse.) See also *Mary A. Sisneros*, 46 ECAB 155 (1994).

⁶ See *Edward J. Meros*, 47 ECAB 609 (1996).

⁷ See *Sharon J. McIntosh*, 47 ECAB 754 (1996).

⁸ See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

⁹ See *James D. Zurcher*, 48 ECAB 274 (1997); *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ *Margarita Bell*, 48 ECAB 172 (1996); *Constance G. Patterson*, 41 ECAB 206 (1989).

¹¹ *Dorothy Kelsey*, 32 ECAB 998 (1981).

¹² See *William P. George*, 43 ECAB 1159 (1992).

A report dated July 6, 1998 from Dr. Albert, a Board-certified psychiatrist, contains an accurate history of the compensable employment factors noted above and an extensive explanation for the diagnoses rendered: major depression, single episode and psychological factors affecting a medical condition. He stated that “the extensive and continuous series of degrading and embarrassing comments, often with screaming and yelling, made by her superior, Branch Manager Dodd” were the “direct cause” of appellant’s occupational disease. Dr. Albert, however, did not offer any medical rationale for this stated conclusion. The Board finds that his report is sufficient to require the Office to further develop the medical evidence in this case.¹³

The October 13 and April 14, 1999 decisions of the Office of Workers’ Compensation Programs are modified to find that appellant has substantiated compensable factors of employment. The decisions are set aside and the case remanded for further development in conformance with this decision.

Dated, Washington, DC
May 21, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹³ See *John J. Carlone*, 41 ECAB 354 (1989).