

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA HOROWITZ and DEPARTMENT OF THE AIR FORCE,
RANDOLPH AIR FORCE BASE, TX

*Docket No. 00-1808; Submitted on the Record;
Issued May 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On August 27, 1998 appellant, a 42-year-old computer assistant, filed a claim alleging that her emotional stress was causally related to her federal employment and that problems with her supervisors had contributed to her condition.

By decision dated July 14, 1999, the Office of Workers' Compensation Programs denied appellant's claim.

The Board has reviewed the record and finds that appellant has not established an emotional condition 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 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

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

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

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 initial question is whether appellant has alleged and substantiated a compensable work factor as contributing to an emotional condition. If a compensable work factor is established, then the medical evidence is examined to determine if an emotional condition causally related to the compensable work factor is established.

In this case, appellant alleged that she was treated unfairly by her supervisor, Don Heath, and was subjected to reprisal, harassment and disparate treatment. The record contains copies of performance ratings and grievances filed by appellant as well as numerous e-mails and memoranda.

With respect to a claim based on harassment or discrimination, 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.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵ In addition, it is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁶ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁷

To substantiate a compensable work factor in this case appellant must submit probative evidence of harassment or establish error or abuse with respect to an administrative action of the employing establishment. In this case, the record contains statements from appellant's supervisors that refute the allegations of disparate treatment. There is no finding of harassment or reprisal by an administrative agency, nor is there any other evidence of record sufficient to establish a claim based on harassment or reprisal. The record indicates that appellant did file

³ 5 U.S.C. §§ 8101-8193; *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

grievances, but no probative evidence of harassment was submitted.⁸ With respect to specific administrative actions, such as performance ratings, appellant has not submitted any probative evidence of error or abuse.

Accordingly, the Board finds that appellant has not alleged and substantiated and compensable work factor as contributing to her condition.⁹ Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹⁰

The July 14, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 7, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ For example, a March 16, 1998 memorandum from the employing establishment indicates that a Step 2 grievance was being returned to appellant for failure to follow appropriate grievance procedures.

⁹ The Board notes that it cannot review new evidence on appeal. Only evidence that was before the Office at the time of its final decision may be reviewed by the Board. 20 C.F.R. § 501.2(c).

¹⁰ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).