

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHERYL A. TRUJILLO and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, DETROIT METRO AIRPORT, Detroit, MI

*Docket No. 01-193; Submitted on the Record;  
Issued November 8, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to factors of her employment.

On November 8, 1999 appellant, then a 38-year-old secretary, filed an occupational disease claim, alleging that factors of her employment caused her stress. She had stopped work on September 15, 1999.<sup>1</sup>

In support of her claim, appellant submitted a copy of a grievance dated September 20, 1999 in which she described the difficulty she had in obtaining a workplace that was quiet and free of distractions so that she could enter time and attendance (T and A) figures. She indicated that distractions at her regular workstation made the work difficult and that, while she was able to work in the operation manager's office, the computer there was loud and gave her headaches. Appellant further related that this office became unavailable and she was then located in the EAP office to work on time and attendance. She described further problems with the computers and was insulted at the efforts made by the employing establishment to alleviate the problems. Appellant continued that on August 8, 1999 the computer at her primary workstation (with which she had no problems) was removed and was not replaced until August 23, 1999. She further stated that on September 15, 1999, although she had not finished entering the T and A figures, Colleen Harris overrode her data entry<sup>2</sup> and closed the time record for that pay period. Appellant

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<sup>1</sup> The record also contains a CA-1, traumatic injury claim, filed by appellant on September 21, 1999. The Office of Workers' Compensation Programs adjudicated the instant claim as an occupational disease claim.

<sup>2</sup> In essence, the computer program was no longer accessible to appellant.

and Ms. Harris then had an altercation and appellant left work. She also made general allegations regarding management style and made 11 recommendations.<sup>3</sup>

In an October 26, 1999 letter to the Office, appellant described her work duties and explained why she could not do T and A entry at her primary workstation and stated that, while her regular work station was suitable for some of her duties, it was not suitable for the T and A input which required 75 percent of her time and for which she required a distraction-free environment. She stated that everything was fine until a new operation's manager felt that he did not have the privacy needed with her sharing his office. Appellant concluded that her stress was related to the environment created by management, including the September 15, 1999 incident. She resigned effective December 18, 1999.

Appellant also submitted an attending physician's report dated September 21, 1999 in which Dr. Tedd L. March, an osteopathic physician, diagnosed stress and anxiety, checked the "yes" box, indicating that the condition was employment related and advised that she could return to work on October 18, 1999. Dr. March also provided office notes dated October 3 and 14, 1999 in which he reiterated his diagnosis and referred her to a psychologist. In an attending physician's report dated October 22, 1999, E.J. Wasilewski, Ph.D., a clinical psychologist, diagnosed work-related stress and adjustment disorder, checked the "yes" box, indicating that the condition was employment related and advised that appellant's return to work was unknown but estimated to be December 1, 1999.

In an October 1, 1999 letter, Ms. Harris, assistant air traffic manager, explained that because of time constraints in entering the time record for the pay period ending September 15, 1999, she closed it out before appellant had completed her data entry. She also described the incident of September 15, 1999 and the numerous attempts that had been made by the employing establishment to find appellant a satisfactory computer and working area for her to enter the T and A data.

The employing establishment also submitted a statement dated October 6, 1999 in which Paul Sheridan, air traffic manager, described the considerable effort spent in trying to please appellant to no avail. In an October 7, 1999 statement, Marcia Bolland noted that she became appellant's supervisor on July 16, 1998. She described appellant's duties, the problem with lack of office space at the employing establishment and the attempts made by the employing establishment to find a satisfactory computer and work environment for appellant.

Appellant also submitted additional evidence regarding an informal grievance submitted in May 1999 which included a diary beginning on August 25, 1998 in which she voiced complaints regarding the work environment, that the support staff was not given due respect and that she received no support from her supervisor. She further submitted a formal grievance dated

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<sup>3</sup> The recommendations included that appellant be transferred, that she be given a new supervisor educated in the requirements of the Model Work Environment, that sick, annual and leave-without-pay be changed to trauma pay or administrative leave, that the facility receive Model Work Environment training, that her union representative attend all meetings, reimbursement for medical expenses be provided, that a quiet working computer in the EAP office be provided, that a working computer and quiet workspace be provided, that the importance of each employee and his or her contribution to the employing establishment be reiterated.

October 6, 1999 and various employing establishment responses.<sup>4</sup> She further submitted evidence regarding an Equal Employment Opportunity (EEO) complaint filed in November 1999.

In a November 12, 1999 report, Dr. Wasilewski reiterated his diagnoses and stated:

"The manner in which [appellant] describes her work environment certainly suggests that she has been subjected to unfair treatment. In an attempt to deal with some of her difficulties it appears as if she took appropriate steps at work to resolve her issues; however, it appears as if her immediate supervisor was of no help, in fact, the supervisor appears to have been a source of perpetuating the ongoing difficulties. As [appellant] presents, she was assigned a job by higher management to do T and A reports for payroll but it appears as if her supervisor did not feel as if secretarial staff/specialist should be doing these reports. It appears as if [appellant] became caught in the middle of another person's agenda.

"Due to a variety of incidents connected specifically with her job, [appellant] has felt an increasing sense of a lack of support and in fact a lack of respect for her position by a variety of staff personnel. When she felt she was an object of a manager's screaming, she could no longer function at work as she could not maintain her compos[ure] and needed to go home....

"To send her back to work without these issues being resolved would only lead to a return to the negative work issues and subsequently result in a return to the stress-producing conditions that resulted in [appellant] needing to take a leave in the first place. [She] has been told that this therapist will release her for a return to work when these matters are satisfactorily resolved in order to insure a healthy atmosphere that will be conducive to [her] health and well being."

In a December 20, 1999 letter, Ms. Harris responded to questions posed by the Office and again described appellant's work duties and the efforts made by the employing establishment to accommodate appellant.

By letter dated January 25, 2000, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Saul Z. Forman, who is Board-certified in neurology and psychiatry. The statement of accepted facts indicated that, in addition to her regular work duties, the fact that appellant did not have a computer from August 8 to 23, 1999 was accepted as a compensable factor of her employment.

Dr. Forman provided a report dated February 7, 2000 in which he advised that he found no evidence of a disabling psychiatric or emotional problem and that there was no causal relationship between the disability beginning on September 15, 1999 and the accepted lack of a computer, concluding that he did not believe that appellant had a work-related condition. His final diagnoses included a nondisabling acute stress reaction, now in remission.

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<sup>4</sup> The grievances contain essentially the same complaints as described in the informal grievance dated September 20, 1999 as described above.

In a decision dated February 16, 2000, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that appellant's condition was caused by employment factors. On March 8, 2000 she requested a review of the written record and submitted witness statements from coworkers Judy Chapman, Dorothy Mitchell and Elaine Bonfiglio, who generally described the problems appellant had had at the employing establishment and the altercation between appellant and Ms. Harris on September 15, 1999.

Following a request by an Office hearing representative, in a letter dated July 3, 2000, Ms. Harris commented about management's efforts regarding appellant.

By decision dated July 28 and finalized July 31, 2000, the Office hearing representative remanded the case to the Office. The Office was to prepare an updated statement of accepted facts to include as compensable factors that appellant did not have a computer from August 8 to 23, 1999 and the altercation between appellant and Ms. Harris on September 15, 1999 because Ms. Harris had yelled at appellant. The Office was then to obtain a supplemental report from Dr. Forman.

Appellant submitted a report dated August 25, 2000 in which Dr. Wasilewski described his treatment and repeated his diagnoses concerning her. He concluded that when he last saw appellant on December 14, 1999 she had improved significantly.

Upon remand, the Office prepared a revised statement of accepted facts which was submitted to Dr. Forman, along with a set of questions and Dr. Wasilewski's August 25, 2000 report. In a report dated August 29, 2000, Dr. Forman noted reviewing the above and again advised that appellant had no work-related disability, including none as a result of the September 15, 1999 incident. By decision dated September 20, 1999, the Office found that appellant did not establish that she had an emotional condition causally related to factors of her employment.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition causally related to employment factors.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup> Workers' compensation law is not applicable to each and every injury or illness that is somehow related to 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>6</sup> On the other hand, there are situations when an injury has some connection with the

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<sup>5</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>7</sup>

In this case, the Board agrees that appellant established two compensable factors of employment, that she was without a computer from August 8 to 23, 1999 and that her supervisor inappropriately yelled at her on September 15, 1999. Regarding her other contentions, however, the Board has long held that frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>8</sup> Likewise, absent error or abuse, the provision of training and equipment<sup>9</sup> and reorganization of the employing establishment<sup>10</sup> are not considered as compensable employment factors. Where disability results from an employee's emotional reaction to certain administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage under the Act.<sup>11</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>12</sup>

In this case, while appellant submitted information indicating that she had filed both a grievance and an Equal Employment Opportunity claim, the record does not indicate any resolution in these matters in favor of appellant. The employing establishment submitted a number of statements, which described the great lengths taken to try to find a satisfactory computer and workplace for appellant. Although she submitted statements from coworkers that were generally supportive of her contentions, other than describing the circumstances of September 15, 1999, they were nonspecific regarding appellant's contentions.

Finally, regarding appellant's contention regarding management style, a claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act, absent objective evidence that the interaction was, in fact, abusive. This principle recognizes that a supervisor or management in general must be allowed to perform their duties and that, in performing their duties, employees will at times dislike actions taken but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent error or abuse. There is no such evidence here and appellant's contention is not compensable. Therefore, appellant has failed to establish additional compensable employment factors.

Appellant's burden of proof is not discharged by the fact that she established two employment factors, which may give rise to a compensable disability under the Act. To establish an occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and

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<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> See *Clara T. Norga*, 46 ECAB 473 (1995).

<sup>9</sup> *Brian H. Derrick*, 51 ECAB \_\_\_\_ (Docket No. 98-119, issued March 29, 2000).

<sup>10</sup> *Mary Margaret Grant*, 48 ECAB 696 (1997).

<sup>11</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>12</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

that such disorder is causally related to the compensable employment factors.<sup>13</sup> Thus, in the instant case, while appellant identified two compensable factors of employment, the medical evidence does not establish that these factors caused her emotional condition. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>14</sup> Appellant's treating psychologist, Dr. Wasilewski, did not indicate that her condition was caused by these factors. Furthermore, he couched his opinion in terms such as "the manner in which the patient describes," "as the patient presents" and "it appears." Medical opinions, which are speculative or equivocal in character, have little probative value.<sup>15</sup> In comprehensive reports dated February 7 and August 29, 2000, Dr. Forman, who provided a second opinion evaluation for the Office, answered specific questions regarding the compensable employment factors and advised that appellant had no disabling work-related condition. She, therefore, failed to establish that her emotional condition is causally related to factors of employment.

The decision of the Office of Workers' Compensation Programs dated September 20, 2000 is hereby affirmed.

Dated, Washington, DC  
November 8, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>13</sup> *Id.*

<sup>14</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>15</sup> *See Jennifer L. Sharp*, 48 ECAB 209 (1996).