

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON A. CARTER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Methuen, MA

*Docket No. 00-799; Submitted on the Record;  
Issued October 25, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her employment.

The Board has duly reviewed the entire case record in this appeal and finds that this case is not in posture for a decision due to an unresolved conflict in the medical evidence.

On September 16, 1996 appellant, then a 44-year-old management analyst,<sup>1</sup> filed an occupational disease claim alleging that she developed a manic-depressive disorder in August 1989 causally related to: her work as a supervisor of 14 employees for 8 years, having to substitute for her supervisor, Ms. Robinson, in her absence, having the clerical supervisor speak to appellant's subordinates about speaking loudly while working in the computer area and interrupt appellant during a meeting, attending meetings at which the progress of her unit was discussed, being asked to answer memoranda for her supervisor, being closely monitored by her supervisor, having her supervisor reject suggestions from her unit but accept the same suggestions from other units, being counseled regarding the performance of her unit, being counseled regarding use of the telephone by appellant and her subordinates, having her supervisor meet with her subordinates, not being supported by her supervisor, having her computer and printer replaced with a computer which appellant felt was not as useful, having the clerical supervisor advise appellant's supervisor that she did not go directly home when she left the office on sick leave, being unable to work because of lack of concentration or fatigue, and being harassed, verbally abused, and discriminated against by her supervisor.

By decisions dated April 8 and August 5, 1997, October 16, 1998, and September 21, 1999, the Office of Workers' Compensation Programs Office denied appellant's claim on the grounds that the evidence of record failed to establish that her emotional condition was caused or aggravated by compensable factors of her employment. During the course of its development of

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<sup>1</sup> Appellant had worked as a unit manager but voluntarily transferred to her analyst position in October 1995.

the case, the Office accepted that appellant identified compensable factors of employment with respect to working as a supervisor of 14 employees for 8 years, having to substitute for her supervisor in her absence, having the clerical supervisor speak to appellant's subordinates about speaking loudly while working in the computer area and interrupting appellant during a meeting, and attending meetings at which the progress of appellant's unit was discussed.

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>2</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>3</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>4</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>5</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>6</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>7</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

<sup>7</sup> *Id.*

whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that her supervisor rejected suggestions from appellant's unit while accepting the same suggestions from other units, counseled her regarding the performance of her unit and the use of the telephone by appellant and her subordinates, met with appellant's subordinates, asked appellant to answer memoranda to the supervisor, replaced her computer equipment, and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although the handling of employment evaluations and leave requests and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In this case, appellant has provided insufficient evidence that her supervisor erred or acted abusively regarding administrative or personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that her supervisor did not support her, there is insufficient evidence to establish this allegation as factual and therefore it cannot be deemed a compensable employment factor.

Regarding appellant's allegation that the clerical supervisor advised appellant's supervisor that she did not go directly home when she left the office on sick leave, this allegation bears insufficient relationship to appellant's regular or specially assigned duties and cannot be deemed a compensable factor of employment.

Regarding appellant's allegation that she could not work due to lack of concentration or fatigue, her need for rest is not a factor in the performance of her duties.

Appellant has also alleged that harassment and discrimination on the part of her supervisor 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>10</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>11</sup> In the present case, the employing establishment denied that appellant was subjected

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<sup>8</sup> See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>11</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor<sup>12</sup>

In statements dated September 16 and November 25, 1996, James Laprel, appellant's supervisor stated that she had argued with her former supervisor on several occasions, became easily agitated with her supervisor and subordinates, and had difficulty performing her job due to her emotional condition. In a statement dated March 23, 1998, Mr. Laprel stated that he had witnessed incidents of loud talking between appellant and her supervisor which sometimes caused appellant to cry. However, he did not indicate the circumstances surrounding such that a determination can be made regarding the relationship of these conversations to appellant's duties. He stated that appellant had discussed with him her various complaints regarding her job and her treatment by Ms. Robinson and he listed the complaints but he did not indicate personal knowledge of these allegations. As he did not explain the nature or circumstances surrounding these allegations, other than to simply relate these allegations as described by appellant, they cannot be deemed compensable employment factors.

In statements dated September 16, 1997 and February 9, 1998, Joanne Jarosz, a subordinate, stated that Ms. Robinson had rejected suggestions from appellant and later accepted the same suggestions from other workers. She stated that on many occasions Ms. Robinson humiliated her in a loud voice in front of other workers.

In statements dated September 16, 1997 and January 18, 1999, Marilyn Marique, a subordinate, stated that Ms. Robinson constantly badgered appellant and her employees, belittled appellant in front of others, and watched her closely. She stated that Ms. Robinson rejected suggestions from appellant's unit and later accepted the same suggestions from another unit. Ms. Marique stated that Ms. Robinson was angry when appellant was on sick leave.

In statements dated December 16, 1997 and May 4, 1999, Maria Garcia, a subordinate, stated that Ms. Robinson gave appellant a "hard time" and made her cry.

In a statement dated January 5, 1998, Candace Crone, a co-worker, stated that appellant sometimes cried after returning from meetings with Ms. Robinson, Ms. Robinson sometimes rejected suggestions from appellant's unit but accepted the same suggestions from other units, and Ms. Robinson could be overheard screaming at appellant on occasion.

Although these witnesses alleged that Ms. Robinson was verbally abusive to appellant, the statements do not provide sufficient detail of the incidents involving Ms. Robinson for a determination to be made as to whether the supervisor did, in fact, act abusively towards appellant. Thus, appellant has not established a compensable employment factor under the Act in this respect.

In the present case, the Office accepted that appellant identified compensable factors of employment with respect to working as a supervisor of 14 employees for 8 years, having to

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<sup>12</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).

substitute for her supervisor in her absence, having the clerical supervisor speak to appellant's subordinates about speaking loudly while working in the computer area and interrupting appellant during a meeting, and attending meetings at which the progress of appellant's unit was discussed. However, appellant's burden of proof is not discharged by the fact that she has established employment factors that may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.<sup>13</sup>

By letter dated February 27, 1997, the Office referred appellant, together with a statement of accepted facts and the case file, to Dr. Maureen E. Smith, a Board-certified psychiatrist, for an examination and evaluation as to whether appellant's emotional condition was caused or aggravated by factors of her employment. The Office advised Dr. Smith that the following employment factors were found by the Office to be in the performance of duty: that appellant was a supervisor of 14 employees for approximately 8 years; she had to fill in for her supervisor in her supervisor's absence; she had several interactions with the clerical supervisor when this supervisor advised appellant's subordinates that they were speaking too loudly when using the computers in her section, and she attended meetings at which the progress of her unit was discussed.

In a report dated March 7, 1997, Dr. Smith provided a history of appellant's condition and the results of a mental status evaluation and diagnosed a bipolar disorder. She stated:

“ [Appellant] presents a history today consistent with the onset of bipolar disorder in mid life, perhaps precipitated by problems in her marriage. By [appellant's] report, she probably functioned at a hypomanic or manic level for some time prior to her diagnosis of bipolar disorder. It is unlikely that the onset of her symptomatology occurred abruptly in 1989 as one might conclude from her reporting. [Appellant] minimizes the importance of her marital trouble as a precipitant for the onset of bipolar disorder. She emphasizes the stress she was experiencing at work. However, her history is that her work functioning was exemplary until she was discharged from the hospital in 1989. In my view the more important precipitant to the intensification of her manic and depressive symptoms is her troubled marriage, later leading to divorce.

“ The etiology of bipolar disorder is generally considered to be primarily biologic although the impact of external stressors often provides a precipitating event in the context of which symptoms appear. [Appellant's] father's history of depression provides some support for the presence of a familial tendency to affective disorder. In my view, the most significant etiologic factors in this onset of [appellant's] bipolar disorder are (1) Her unique biology and (2) Her marital problems.

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<sup>13</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

“Subsequent to her first hospitalization, [appellant] developed significant difficulty in performing her work functions without becoming irritable and argumentative. One hypothesis to account for this change is that once her manic symptoms were somewhat controlled with mood stabilizers, she became more depressed and irritable as her euphoria decreased. Given that her bipolar disorder has been very difficult to treat because of its rapid cycling nature, she has been forced to manage with a mixture of depression, irritability and hypomania most of the time. One way to explain the onset of her difficulties performing her work, would be that this combination of mood problems (her disease itself) has made it harder for [appellant] to easily accomplish the tasks of her job.

“In my opinion, though, [appellant’s] work environment cannot be construed as causing her symptoms of bipolar disorder, it is likely, that given the difficulty of controlling her mood symptoms, she would be easily overstimulated in any work environment. I agree with her and her [physician’s] assessment that she would at this point, be unable to function effectively in any work situation. By her history and the history provided in the documentation supplied for my review, her performance at work is marginal at best. She is failing to function despite significant accommodations made to help her maintain a reasonable work schedule. There had been no aggravation of her condition by any employment factors. Rather, the natural progression of her underlying condition has evolved on its own to the point where she is no longer suited for her work or able to perform the core functions of her job despite extensive prior accommodations.

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“ In my opinion, none of the accepted facts of [appellant’s] work performance can be construed to have directly caused her condition of bipolar disorder. In addition, no specific factor of employment can in my opinion be considered to have aggravated, precipitated or accelerated her disorder. It is my opinion, that in general, she is not able to cope with normal everyday circumstances because of her bipolar diathesis. It is my opinion, these circumstances would exist in any work which [appellant] attempted to perform.

“ In my opinion the stress of attempting to work exacerbates [appellant’s] symptoms of bipolar disorder. In addition, it is my opinion that [appellant’s] inability to adequately perform the functions of her job represent additional stress.”

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“In my opinion, [appellant] is at present disabled from work. In my opinion her disorder is such that she is no longer able to handle even average stimulating environments. There is no exacerbation of her condition by any of the specific factors of her employment.”

In a report dated September 1996, Carol Israel, Ph.D., a licensed, clinical psychologist, stated that appellant was diagnosed with bipolar illness in 1989 and had been hospitalized three times for her condition. She stated:

“Continuing to function in a work environment has become nearly impossible for [appellant]. The stress of deadlines, of co-operative projects, of overseeing others, of working with others, of concentrating on her work, of making herself get up and go to work, has become too great. She has tried over the years to make changes in her work environment, transferring departments in order to reduce stress, but the problem remains the same. [Appellant] finds that she cannot handle the stress of the job.

“Bipolar illness is a hereditary, biological illness. In some cases, with medication, patients can function adequately. In [appellant’s] case, however, the illness has proved resistant to medication stabilization. Although not causing the illness, the stresses of the workplace have exacerbated it. Her emotional frailty and volatility are aggravated by the pressures of her job....

“It is unclear when, or if, in the future [appellant] might be stable enough to manage the stressful work environment that she is now needing to leave.”

In a report dated April 28, 1997, Dr. Israel stated her opinion that appellant’s bipolar disorder was, in part, precipitated and accelerated by the demands of her workplace, and not by marital stress. She stated that she was aware of the employment factors considered by the Office to be in the performance of duty.

In a report dated June 11, 1999, Dr. Israel stated her opinion that workplace conditions aggravated and accelerated appellant’s bipolar condition. She stated that appellant accomplished a great deal of work at her job prior to diagnosis and treatment of her bipolar condition and Ms. Robinson acquired expectations of appellant that were not fulfilled during her later less energetic state, thus creating anger and resentment directed at appellant and a hostile work environment. Dr. Israel stated that Ms. Robinson did not believe that appellant was ill, accused her of faking her illness, questioned her requests for sick leave, was angry that she no longer performed the amount of work that Ms. Robinson has come to expect, and harassed her and discriminated against her.

The Board finds that there is an unresolved conflict between Dr. Smith, an Office referral physician, and Dr. Israel, appellant’s attending psychologist, as to whether her emotional condition was caused or aggravated by the factors which the Office found to be compensable: that appellant was a supervisor of 14 employees for approximately 8 years, she had to fill in for her supervisor in her supervisor’s absence, she had several interactions with the clerical supervisor when this supervisor advised appellant’s subordinates that they were speaking too loudly when using the computers in her section, and she attended meetings at which the progress of her unit was discussed.

The Federal Employees’ Compensation Act provides, in pertinent part, “If there is disagreement between the physician making the examination of the United States and the

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>14</sup>

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to a Board-certified psychiatrist for an examination and evaluation of whether appellant’s emotional condition was caused or aggravated by any compensable factors of employment. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decision of the Office of Workers’ Compensation Programs dated September 21, 1999 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC  
October 25, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>14</sup> 5 U.S.C. § 8123(a); see *James P. Roberts*, 31 ECAB 1010 (1980).