

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE E. SHANKS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Kansas City, MO

*Docket No. 01-26; Submitted on the Record;
Issued September 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she suffers from high blood pressure or an emotional condition due to factors of her federal employment.

On June 8, 1997 appellant, then a 43-year-old tax examiner, filed a notice of occupational disease alleging that she suffered from high blood pressure during the hours she was required to be at work.¹ Appellant noted that she first realized her condition was caused or aggravated by her employment on June 5, 1997. She further noted that she had not missed any time from work.

In support of her claim, appellant submitted an ambulatory blood pressure report from Truman Medical Center with a recorded summary of appellant's blood pressure readings over a 24-hour period on June 4, 1997. The physician's name listed on the test results was Dr. Nathaniel Winer, who is a Board-certified internist.

In a November 30, 1998 letter, the Office of Workers' Compensation Programs requested that appellant identify specific work factors which she believed to have caused or aggravated her high blood pressure.

In a January 22, 1999 decision, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

On January 28, 1999 appellant requested reconsideration.

Appellant submitted an attending physician's report (CA-20) from Dr. Richard Haile, a Board-certified internist, dated January 26, 1999. Dr. Haile diagnosed hypertensive diabetes and reported a date of injury as June 5, 1997. He further stated that appellant's condition was not caused or aggravated by an employment activity.

¹ She noted that her blood pressure is high when she goes to work at 6:00 p.m. and drops to normal when she goes home at 3:00 a.m.

In a report dated January 26, 1999, Dr. Haile diagnosed hypertension, chronic back pain and diabetes. He advised that appellant's conditions were under control and that she was not totally disabled from work.

In an April 7, 1999 decision, the Office denied modification.

Appellant filed a second request for reconsideration on April 15, 1999 and submitted a narrative statement contending that she was under stress at work.² Appellant indicated that she was improperly removed from her position effective January 1, 1999. She alleged she was under stress at work as a result of the following work incidents: (1) she was expected to pack up three to five offices on her own during the week of December 13, 1998 without assistance; (2) she was asked to stay late to pack for a pending move although she had a prior medical appointment; (3) the employing establishment ignored her requests for supplies and required her to complete requisitions slips for everything she needed to complete her duties; (4) she was discriminated against because no one answered her questions as to why there was not an equal distribution of work which caused stress on the job; (5) she felt threatened when an "IDRS Secretary" approached her and told her she wanted appellant's job; (6) she was expected to correct mistakes made by IDRS Secretary even though it appeared to appellant that the IDRS Secretary was trying to prevent appellant from completing her daily work; (7) her workspace was too small, cluttered with boxes; (8) she had to keep large filing cabinets in her office which were a health and safety hazard; (9) she was improperly denied three weeks of leave and given only three days of excused leave following the death of her aunt; and (10) she was improperly denied promotions to a higher grade and that her previous performance awards were ignored when she applied for vacancy announcements in higher grade positions.

In a January 10, 2000 report, Dr. Winer noted that appellant had an ambulatory blood pressure monitor applied for 24 hours on June 4, 1997. He indicated that the findings were consistent with hypertension and that control of appellant's blood pressure was essential to her health.

On February 2, 2000 appellant's supervisor, Betty Puterbaugh, stated, although appellant had been given directions to begin packing an office for a physical move of the branch where she worked, appellant never began the packing process. According to Ms. Puterbaugh, she reassured appellant that the move would not take place despite the union directive since the move was still in the process of negotiation. She also explained that appellant would not be expected to pack up the office by herself and would have the assistance of two or three other tax examiners. After appellant left work on December 11, 1998 she did not return and did not provide medical documentation for her absence as requested by Ms. Puterbaugh. She stated that appellant was then suspended from duty and pay for three days effective March 29, 1999. Appellant's supervisor further stated that she was never informed by appellant of a lack of space or supplies.

² Appellant submitted medical evidence relevant to a back condition including a magnetic resonance image scan of the lumbar spine taken on August 11, 1999 showing disc protrusions and two reports that diagnosed degenerative disc disease.

In a decision dated February 4, 2000, the Office denied modification, finding that appellant failed to establish any compensable factors of employment to support her claim for an emotional condition.

Appellant filed two additional requests for reconsideration on February 22 and April 28, 2000 but she did not submit any new evidence. The Office denied modification on March 13 and September 1, 2000 respectively.

The Board finds that appellant failed to establish that her high blood pressure is causally related to factors of her employment.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the existence of the disease or condition; and (3) medical evidence establishing that the employment condition factors identified by claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

In this case, the Office properly found that appellant submitted insufficient medical evidence to establish that her high blood pressure is causally related to stress in the workplace. Although appellant's attending physician diagnosed hypertensive diabetes and reported a date of injury as June 5, 1997, he specifically noted that appellant's condition was not caused or aggravated by her employment. Appellant was also treated by Dr. Haile who opined that she was disabled by conditions including hypertension, but he did not address the issue of causal relationship. In the absence of a rationalized opinion to establish that appellant's high blood pressure or hypertension is causally related to factors of her federal employment, appellant has failed to carry her burden of proof.

The Board also finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

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 employment and have some kind of causal connection with it but nevertheless are not covered because they are not found 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

³ The Board notes that appellant has not filed a claim for a back condition related to her federal employment; therefore, the medical evidence pertaining to her degenerative back disease is not pertinent to adjudication of this case.

⁴ *Charles E. Evans*, 48 ECAB 692 (1997); *Ruth Seuell*, 48 ECAB 188 (1996).

employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁵

Appellant contends in this case that she was improperly denied excused leave following the death of her aunt. She states that the employing establishment did not provide a safe work environment since her workspace was too small and cluttered with boxes. She further alleges that she was improperly denied promotions to a higher grade and that the employing establishment completely ignored her requests for an equal distribution of work and additional supplies required to complete her job.

While the assignment of work duties, the assessment of work performance or conduct and the decision to deny a promotion is generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁶ Likewise, disputes over leave are generally a personnel matter and not related to a claimant's assigned duties.⁷ An administrative or personnel matter will be considered an employment factor only where the evidence discloses error or abuse on the part of the employing establishment. The Board finds no such evidence of error or abuse by the employing establishment in the handling of administrative and personnel matters pertaining to appellant. It was reasonable for appellant's supervisor to seek medical documentation before granting sick leave and she was justified in questioning appellant's need for three weeks of leave following the death of appellant's aunt. Appellant's supervisor has also explained that appellant did not follow proper procedure in making her requests for work supplies.

Furthermore, the Board finds no factual support in the record to corroborate appellant's allegation that the IDRS Secretary was trying to undermine her work because she wanted appellant's job. For harassment to give rise to a compensable disability under the Act, there must be some evidence that the acts alleged or implicated did, in fact, occur.⁸

Thus, because appellant has failed to allege a compensable factor of employment, she was not entitled to compensation based on her claim for an emotional condition.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ See *Elizabeth W. Esnil*, 46 ECAB 606 (1995); *Martha L. Watson* 46 ECAB 407 (1995).

⁷ *Elizabeth Pinero*, 46 ECAB 123 (1994).

⁸ *Id.*

The September 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 11, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member