

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONA L. MEIER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Oklahoma City, OK

*Docket No. 00-2736; Submitted on the Record;
Issued April 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On March 1, 1998 appellant, then a 38-year-old supervisory review officer, filed an occupational disease claim alleging that employment factors caused a severe major depression, post-traumatic stress disorder, migraines and ulcers. She stopped work on July 12, 1997. On the claim form, the employing establishment indicated that it was controverting the claim. Appellant submitted medical evidence, which included reports dated July 3 and December 29, 1997 from Dr. Charles E. Smith, Board-certified in psychiatry and neurology, who diagnosed work-related stress and advised that appellant could not work.

By letter dated March 19, 1998, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim. In response, she submitted a statement dated March 23, 1998, in which she indicated that she had been harassed and intentionally subjected to public humiliation and embarrassment by employing establishment management, particularly by Ronald James and Dave Edgington. She indicated that she was singled out because she exposed improper and illegal activities, that she was placed on leave restriction, received a poor performance appraisal, was openly mocked and called names and that management went through her personal property. She generally indicated that she had problems because of the Oklahoma City bombing and because two revenue officers had been assaulted. She advised that she had filed an Equal Employment Opportunity (EEO) Commission complaint.

The employing establishment submitted a statement from Mr. Edgington, Chief, Field Branch I, who disputed appellant's allegations and indicated that she had a "defiant attitude."

By decision dated May 28, 1998, the Office denied the claim, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. On June 26, 1998 she requested a hearing that was held on December 16, 1998. At the hearing appellant testified that her EEO claim had been denied at the District Court level but had been appealed to

the Circuit Court. She also submitted several hundred pages of supporting documentation, which included a personal statement, a mid-year review, copies of emails, transcripts of her EEO case, transcripts of taped meetings, copies of newspaper articles and medical evidence.

In a March 23, 1999 decision, an Office hearing representative affirmed the prior decision as modified, finding that appellant failed to establish a compensable factor of employment. On March 12, 2000 appellant requested reconsideration and submitted additional evidence. In an August 18, 2000 decision, the Office denied modification of the prior decision. The instant appeal follows.

The Board finds that appellant has not established that she sustained employment-related stress.

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.¹ 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.² On the other hand, there are situations when an injury has some connection with the 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.³

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁴ This includes matters involving the training or discipline of employees. In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of the case to determine whether the employing establishment acted reasonably.⁵

Furthermore, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Gregory N. Waite*, 46 ECAB 662 (1995).

⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

discrimination are not compensable.⁶ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷

In this case, while appellant made a general contention regarding the Oklahoma City bombing, she did not indicate that she was employed in the Murrah Building or otherwise indicate how the bombing caused her condition. She noted that two coworkers had been assaulted which contributed to her condition. However, she did not provide specific information regarding these assaults and their relationship with her employment. Finally, she provided no substantiation that management went through her personal property. The Board, therefore, finds that these contentions are not compensable factors of employment.

Regarding appellant's allegations that the employing establishment issued unfair performance evaluations and wrongly denied leave, 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.⁸ Although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties 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.⁹ There is insufficient evidence in the instant case to indicate that the employing establishment erred or acted abusively. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

Regarding appellant's contention that she was subjected to harassment and humiliation by management, an employee's complaints about the manner in which supervisors perform supervisory duties or the manner in which a supervisor exercise supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.¹⁰ In determining whether the employing establishment erred or acted abusively, the Board has examined whether

⁶ See *Michael Ewanichak*, 48 ECAB 354 (1997).

⁷ *Id.*

⁸ See *Janet I. Jones*, 47 ECAB 345 (1996).

⁹ *Id.*

¹⁰ *Daniel B. Arroyo*, 48 ECAB 204 (1996).

the employing establishment acted reasonably.¹¹ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.¹²

Appellant submitted voluminous materials that included a number of statements from coworkers and transcripts from her EEO claim,¹³ which contain allegations of reverse discrimination on Mr. James' part and indicate that he reorganized the employing establishment and voiced his complaints regarding appellant's leave use. The Board finds, however, that none of the statements provide sufficient support to establish that the employing establishment committed error or abuse in these administrative matters with specific reference to appellant or that she was verbally abused by Mr. James. Appellant testified that her EEO claim had been denied and the employing establishment submitted a statement denying appellant's allegations.¹⁴

The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁵ The Board, therefore, finds that in this case appellant's emotional condition is considered self-generated.¹⁶ She has failed to establish that she sustained an emotional condition in the performance of duty.¹⁷

¹¹ *Ruth S. Johnson*, *supra* note 5.

¹² *See Barbara J. Nicholson*, 45 ECAB 803 (1994).

¹³ These included statements from Gloria Parker, Jessica Harrison, Mr. James, Samuel M. Koch, Jr., Kathy Howe, Trudy Henry, Mr. Edgington, Kathy Purola, Lonnie Hartline, Quinton Bland, Gary Hoeffken, Larry Lakey, Merv Coil and Ronald Morris. Appellant further submitted excerpts from publications. The Board has held that these are of decreased probative value because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee. *See Dominic E. Coppo*, 44 ECAB 484 (1993).

¹⁴ Transcript and deposition testimony submitted by appellant also contains denials of appellant's allegations.

¹⁵ *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹⁶ *Sandra Davis*, 50 ECAB 450 (1999).

¹⁷ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

The August 18, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 2, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member