

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA T. RANEY and DEPARTMENT OF THE ARMY,  
BAYNES-JONES ARMY COMMUNITY HOSPITAL, Fort Polk, LA

*Docket No. 00-1315; Submitted on the Record;  
Issued August 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

On October 10, 1998 appellant, then a 41-year-old social work assistant, filed an occupational disease claim alleging that in 1995 she realized that she suffered from job-related stress due to continued harassment and reprisal.

By decision dated March 5, 1999, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a March 18, 1999 letter, appellant requested an oral hearing before an Office representative. In a May 12, 1999 letter, appellant again requested an oral hearing. Appellant also requested that the Office subpoena witnesses and documents pertaining to her claim.<sup>1</sup>

By decision dated November 8, 1999, the hearing representative affirmed the Office's March 5, 1999 decision.

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.<sup>2</sup> To establish her claim that she

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<sup>1</sup> The record contains a July 26, 1999 decision in which the Office denied appellant's request to subpoena witnesses and documents. Appellant, however, has not appealed this decision and the matter is not before the Board.

<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

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.<sup>3</sup>

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 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 her 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.<sup>4</sup>

In this case, appellant has alleged that she was subjected to harassment by employing establishment management and coworkers, and reprisal by management. She alleged that in January 1997 her office was taken away from her and she was placed in an office on a closed and isolated ward where she felt unsafe. Appellant stated that two individuals already occupied her new office and that she did not have a desk or anywhere to put her necessities. She further stated that the office did not provide privacy for interviewing patients or a telephone. Appellant also stated that in June 1998 she was told to move out of her office in the hospital to another location that required her to wait in extreme heat conditions for the shuttle bus to ride three to four miles to the hospital to see patients.

Appellant has also alleged that management and coworkers yelled at her and made degrading remarks about her in meetings. She stated that a coworker, Mr. Kissinger, made derogatory remarks to another employee while in her presence about the movie "Amistad" and the dragging death of an African-American in Jasper, Texas. Appellant also stated that Mr. Russell, chief of the employing establishment clinic, brought a Black female voodoo doll to a staff meeting in 1995 to encourage another coworker to adjust his attitude. She further stated that several coworkers called her a "bitch" and the inspector general verbally attacked her.

Further, appellant alleged that she was placed on the on-call roster, which was not contained in her job description. Additionally, she alleged that her job description was rewritten and she was given the duties of a lower grade position. Appellant alleged that an "X" was placed on her job description so that she could not put any information in the section she was permitted to write in. She attributed her emotional condition to a change of her supervisor.

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<sup>3</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant contended that she received counseling sessions and disciplinary letters because she refused to see a patient, who was intentionally given to her and dying from the same disease that caused her husband's death, she failed to respond to her on-call pager, a patient's husband complained about her angry behavior and she hung up the telephone when a coworker yelled at her.

Appellant further contended that, in 1998, her car tires were damaged by nails. She stated that management required her to use annual leave for the time she spent reporting the incident to the military police. Appellant further stated that subsequent to an investigation she initiated, grave-like symbols were engraved on her car and her coat was cut and burned in her car.

In addition, appellant contended that she was threatened with scissors by a coworker.

Appellant asserted that she was given a cash award in 1995, but that she did not receive the cash until two years after the award was issued while a white male employee received his cash award in a timely manner. She also asserted that while a coworker was awarded a pin, she did not receive her pin because the employing establishment ran out of them. Appellant noted that she did not receive her pin until she mentioned the incident during a congressional investigation.

Further, appellant asserted that her supervisor, Lieutenant Alyson M. Delaney, acting chief of social work service, telephoned her while she was at home on sick leave and at the hospital with her dying husband regarding her plan to return to work. She also asserted that while she was at the hospital with her dying husband and waiting for a consultation with her husband's physician, she was kept on the telephone for an unreasonable amount of time by Lieutenant Delaney, who wanted to verify that she had coverage for her on-call duty. Appellant stated that Lieutenant Delaney also required her to return certain items to the office at that time. Appellant further stated that Lieutenant Delaney telephoned her at home requesting that she return to work early from leave because Lieutenant Delaney planned to go on leave soon.

Appellant contended that Mr. Russell briefed incoming supervisors that she was a problem employee and those who listened to him immediately took some adverse action against her.

In August 1995, appellant alleged that she received a "F" in a course she had taken, which required her to repeat several hundred hours of field work based on a conspiracy between Dr. O'Brien, a supervisor of her college course and Captain Eugene A.J. Lamoureux, chief of social work service, to effect her grade after she initiated a congressional investigation concerning her allegations of harassment.

Appellant stated that Lieutenant Delaney denied her request for 40 hours of administrative leave or a temporary-duty assignment to take a course. She further stated that Lieutenant Delaney denied her request for overtime pay and compensatory time for hours worked.

Appellant contended that she was harassed when she received a promotion that was promised to someone else.

She further contended that her files were audited 100 percent 3 to 4 times a week and that Captain Miller, her supervisor, screened her patients and did not tell her he had done so.

Appellant asserted that Renee H. Humble, admissions coordinator of a private rehabilitation center, was hostile towards her on the telephone because she could not provide Ms. Humble with the desired forms to assist in the discharge and the placement of a patient.

Appellant stated that the employing establishment did not respond to her complaints of harassment.

Finally, appellant alleged that she was subjected to reprisal by management because she initiated a congressional investigation of her harassment allegations and filed grievances with the employing establishment and complaints with the Equal Employment Opportunity (EEO) Commission regarding placement on the on-call roster and on hold by Lieutenant Delaney, pressure to return to work early from leave, her receipt of a "F," the voodoo doll incident, her refusal to consult with a patient dying from cancer, assignment of lower grade work duties and office move. Appellant contended that the individuals subjecting her to harassment and reprisal were the same ones who investigated and responded to her complaints.

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.<sup>5</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>6</sup> Verbal altercations, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.<sup>7</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>8</sup>

In support of her allegations of harassment, appellant submitted an August 8, 1999 narrative statement of Della R. Rice, a coworker, revealing that she witnessed appellant being harassed and nothing was done about it. Ms. Rice stated that she saw the carving on appellant's car, the cuts and burn marks on appellant's coat and the voodoo doll, which Mr. Russell stated was for an attitude adjustment. In addition, she heard a coworker exclaim "that bitch" after speaking with appellant. Ms. Rice does not provide that she witnessed someone actually damaging appellant's car and coat. Further, she did not indicate that she knew Mr. Russell brought in the doll to harass appellant. The record does not indicate that the comment heard by Ms. Rice was made directly to appellant.

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<sup>5</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>6</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>7</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>8</sup> *Compare Abe E. Scott*, 45 ECAB 164 (1993); *Sandra F. Powell*, 45 ECAB 877 (1994); *Raul Campbell*, 45 ECAB 869 (1994).

In an undated narrative statement, Ms. Rice indicated that she witnessed appellant being humiliated and embarrassed usually by the chief of social work service, new incoming chiefs and employees from other sections. Further, she related that she witnessed a nurse call appellant a “bitch” and no action was taken against the nurse. Ms. Rice, however, did not provide any specific details about these incidents such as, the date the comment was made and the circumstances involving the comment.

In an October 1, 1998 narrative statement, Sheila Cox, a coworker, indicated that she heard Mrs. Strother, a coworker, refer to appellant as a “bitch.” She further stated that Ms. Morse negatively talked about appellant’s work in the presence of other staff members. She recalled appellant telling her about a conversation she had with an employee who told her about finding someone to commit a murder for hire. She stated that Mr. Kissinger made remarks in her presence about getting a snake and killing it, the incident in Jasper and attending a Klu Klux Klan meeting in Jasper. Ms. Strother’s statement was an opinion that does not appear to have been expressed in appellant’s presence. Ms. Cox did not provide any specific details about the incident involving Ms. Morse. Further, she did not witness the conversation between appellant and the employee and she did not indicate having knowledge that the comments made by the employee and Mr. Kissinger were specifically directed towards appellant.

In a May 5, 1995 narrative statement, Captain Timothy Baker, an acting inspector general, indicated that Mr. Barren and Ms. Mueller had substantiated the issue whether a derogatory comment had been directed towards appellant by a coworker. The record, however, does not indicate that there was a finding that this type of behavior was ongoing or repeated conduct on the employee’s part.

Regarding the damage to appellant’s car tires, Stanley H. Salter, an employing establishment fire and safety officer, stated in a December 11, 1998 statement that appellant told him about finding nails in both of her rear car tires and how she discovered them. He further noted, however, that appellant did not know whether the incident occurred in the employing establishment parking lot and that she declined to file a report of the incident.

The statement of Joan Chambers, an employing establishment supervisor, that she witnessed harassment and stress at the employing establishment and that appellant was subjected to continued harassment and stress by the employing establishment does not provide any specific details of harassment.

In an August 9, 1999 narrative statement, Susan Muro, appellant’s coworker, stated that appellant had a fight with Lieutenant Peterson, but she could not remember the details about it. She further noted that Lieutenant Peterson, Captain Lasome and Lieutenant Delaney looked and treated people of color differently. She recalled incidents where employees of color transferred to other offices due to the actions of Captain Lasome, Lieutenant Peterson and Lieutenant Delaney. Ms. Muro did not provide any details about the incident between appellant and Lieutenant Peterson and the other incidents did not specifically involve appellant.

Ms. Rice’s statement that Mr. Russell and Dr. O’Brien tried to sabotage appellant’s internship by calling the dean of Grambling State University and making false accusations

against her does not establish that appellant was harassed because she does not indicate that she witnessed the telephone call.

While the statements from Ms. Rice, Ms. Cox, Captain Baker, Ms. Chambers and Ms. Muro offers some support for appellant's allegations of harassment, they are too vague to constitute the type of corroboration necessary to establish appellant's claim. Thus, they are insufficient to establish appellant's burden.

There is no evidence that the employing establishment did not investigate appellant's allegations. The record contains decisions from the employing establishment addressing complaints filed by appellant regarding her allegations of harassment.

In response to appellant's allegation that she was hostile towards her on the telephone, Ms. Humble stated in a January 23, 1996 letter to Lieutenant Delaney that when she tried to explain to appellant why she should have the desired form appellant raised her voice for the first of several times during their conversation. She further stated that she apologized to appellant for upsetting her and offered to fax a blank copy of the form to her for completion. She noted that this upset appellant even more and she terminated the conversation with appellant. The Board finds that the incident involving appellant and Ms. Humble represents a compensable employment factor.

Appellant has made several allegations that fall within the category of administrative or personnel matters. 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.<sup>9</sup> 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.<sup>10</sup>

Appellant's allegations regarding her office relocation, the lack of a desk and telephone, a change in job duties and supervisor, counseling sessions and disciplinary letters,<sup>11</sup> the use and denial of leave,<sup>12</sup> overtime pay and compensatory time,<sup>13</sup> request to return certain items, monitoring of work,<sup>14</sup> initiation of a congressional investigation<sup>15</sup> and filing of grievances and complaints<sup>16</sup> involve administrative matters unrelated to appellant's assigned duties and, therefore, do not constitute compensable factors of employment.

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<sup>9</sup> *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>10</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>11</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>12</sup> *Elizabeth Pinero*, 46 ECAB 123 (1994); *Donna Faye Cardwell*, *supra* note 3.

<sup>13</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>14</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>15</sup> *See Blondell Blassingame*, 48 ECAB 130 (1997); *Sammy N. Cash*, 46 ECAB 419 (1995).

<sup>16</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

In determining whether the employing establishment erred or acted abusively, the Board has looked at whether the employing establishment acted reasonably.<sup>17</sup> Appellant submitted a narrative statement signed by several of her coworkers and dated July 30, 1997 providing that she was forced to move out of her office in January 1997 and that she was relocated to a closed ward which caused them to be concerned about appellant's safety.

In an undated narrative statement, Alfred J. Jones, appellant's coworker, stated that appellant's office was relocated to a closed ward, then moved to a building outside of the hospital, which required appellant to ride a shuttle bus to the hospital. He noted that when appellant moved back into the hospital she was moved into area that did not provide any privacy.

Shirley A. Coleman, appellant's coworker, noted that she offered to take appellant's pager while she was on-call and the relocation of appellant's office.

Ms. Rice stated that appellant was being sabotaged in that her workspace and access to the telephone were eliminated, statements were written about her for failing to perform her work duties, appellant was placed on the on-call roster, which was not in her job description and appellant was punished when she was unable to fulfill this duty.

In response, Colonel C. William Fox, Jr., an employing establishment commander, stated in a November 24, 1997 letter to appellant that once she expressed concerns about the safety of her work environment, immediate action was taken in August 1997. Colonel Fox stated that a complete examination was conducted by management and it was determined that there was no adequate space available to move appellant back into her previous office. He noted that available space was located adjoining the social work clinic and an urgent construction project was initiated to build a new office for appellant. He further noted that materials were ordered and work was initiated during the week of August 25, 1997. He stated construction was completed on August 28, 1997 and appellant received notification that she could move into her new office.

Mary Teta, appellant's supervisor, indicated in a December 14, 1998 statement that appellant's job rarely required her to see patients privately and that most of her work would be performed on the patient care unit. She noted that when privacy was necessary, there was a common conference/break room, which was utilized by all the people in appellant's branch. She further noted that plans were in progress to purchase modular furniture that would provide more than adequate workspace with security for files.

Ms. Teta stated that appellant was assigned to her office in the hospital and that Major Fulton was working on obtaining a telephone for her. Ms. Teta also stated that on September 28, 1998 she inquired about the status of a request for a telephone and noted that a work order was completed that day. Ms. Teta explained that appellant's telephone was not installed until November 10, 1998 due to a delay beyond the control of her office. She stated that after the submission of the work order for the telephone, the installation was delayed due to end of the year close out and the delay in releasing funds for the new fiscal year. She noted, however, that appellant had access to and did use the telephone on the nurse consultant's desk, which was

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<sup>17</sup> *Kathleen D. Walker, supra* note 10.

about four feet from appellant's desk. She also noted that appellant was told that she was welcome to use the telephone until hers was installed.

Regarding disciplinary actions taken against appellant, Major Larry W. Applewhite, chief of the social work service, indicated in an August 2, 1995 memorandum that appellant would not have been given the consult to see the patient with colon cancer if he had known that her husband had died from the same illness. In his November 7, 1995 memorandum, Major Applewhite stated on that date he informed appellant of her failure to respond to her pager and to answer her telephone at home when emergency room personnel tried to contact her. He noted appellant's explanation that she had been issued a defective cellular telephone and his response that appellant did not inform emergency room personnel to call her on the cellular telephone rather than at home. He reminded her about the responsibility to keep the emergency room informed of how she can be reached and stated that no problem was identified with her cellular telephone.

Concerning the complaint made against appellant by a patient's husband, Captain Lamoureux noted Lieutenant Peterson's comment that better communication would have alleviated the problem. He stated that this was an ongoing problem with appellant in that she failed to follow directions provided in her job description which required her to refer complex discharge planning problems requiring professional social work judgment to the chief of the service, to be attuned to the emotionally charged climate of the hospitalized patient(s) and be able to cope with the demanding pressures of ward involvement. Captain Lamoureux further stated that appellant failed to comply with his requests regarding accountability, the discharge planning process, training and recording, and noted her poor work habits.

Regarding the incident where appellant hung up the telephone on her, Kathryn L. Morse, an employing establishment registered nurse, explained that appellant became upset when she inquired about the arrangement for hospice care for a patient being discharged from the hospital because appellant believed that she was trying to perform her job. She stated that subsequent to the incident, appellant informed her not to call her anymore.

Mr. Jones stated that appellant's request for a temporary-duty assignment was denied by Lieutenant Delaney due to a lack of money in the budget according to Lieutenant Delaney while two employees were given temporary-duty assignments several weeks later.

In response, Lieutenant Delaney stated in a January 10, 1996 memorandum that appellant was denied 40 hours of administrative leave to attend a course because there were no regulatory provisions that required and/or allowed duty time to be given to an employee to pursue personal interests. She noted that leave without pay would be considered for approval.

Regarding the use of leave, Mitzi Thomas-Lawson, appellant's supervisor, stated in a December 1, 1998 memorandum that she did not receive any documentation from appellant's physician stating that her request for sick leave was due to job-related stress.

Further, Ms. Teta explained that appellant was required to take leave when she reported the tire incident to the military police based on the advise she received from the assistant chief of the manpower branch that this activity was not considered in the line of duty. Ms. Teta noted



that appellant never offered an explanation about the incident and/or requested that she be allowed to take the time. Rather, she had to seek an explanation from appellant.

In addition, Ms. Teta stated that she called appellant at home about her leave status because she was working for her. She requested that appellant provide a copy of a sick leave statement from her physician covering the desired period of leave. She explained to appellant that she called her at home because when she has not heard from her staff between 8:30 a.m. to 9:00 a.m. she starts to check on them because she is concerned something might be wrong.

Decisions of the inspector general and employing establishment found appellant's allegations of harassment without merit. Further, the employing establishment stated that there was no evidence to substantiate appellant's allegation that the congressional investigation was improperly conducted since it was done so by those she accused of harassing her.

The Board finds that the statements of Colonel Fox, Ms. Teta, Major Applewhite, Captain Lamoureux, Ms. Morse, Lieutenant Delaney and Mrs. Thomas-Lawson provide reasonable explanations for the employing establishment's handling of the relocation of appellant's office, disciplinary actions, and the use and denial of leave. Thus, appellant has failed to establish that the employing establishment committed error or abuse in handling these administrative matters. In addition, appellant has failed to submit any evidence establishing that the employing establishment committed error or abuse in handling the other administrative matters noted above.

Appellant has established a compensable factor of employment with respect to her reaction to the telephone conversation she had with Ms. Humble. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor, which 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 factor.<sup>18</sup>

In this case, there is no medical report that specifically relates appellant's emotional condition to the accepted employment factor. In support of her claim, appellant submitted disability certificates, medical reports and treatment notes from Dr. Herbert A. Nesom, a Board-certified family practitioner, Dr. Thomas J. Davis, a Board-certified family practitioner, and Dr. Paul Keith Nabours indicating that she was disabled from work due to job stress. However, this medical evidence failed to specifically address whether appellant's disability was due to her telephone conversation with Ms. Humble.

As there is no rationalized medical evidence establishing that appellant's emotional condition was causally related to the accepted compensable factor, harassment by Ms. Humble, appellant has failed to discharge her burden of proof.

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<sup>18</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

The November 8 and March 5, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
August 22, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member