

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELINDA JANIGA and FEDERAL DEPOSIT INSURANCE COMPANY,
RESOLUTION TRUST CORPORATION, Irvine, CA

*Docket No. 01-811; Submitted on the Record;
Issued August 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

This case was before the Board on a prior occasion. On March 10, 1994 appellant, a 49-year-old foreclosure technician, filed a Form CA-2, claim for benefits based on occupational disease, alleging that she had developed an anxiety disorder and hypertension caused by factors of her employment. In an undated statement, appellant alleged that her problems began in May 1993 when she complained to her section chief, Teri Miskulin, about the performance level of two coworkers. Appellant stated that these coworkers retaliated by acting in an abusive and uncooperative manner toward her; she stated that she repeatedly told Ms. Miskulin about the obnoxious actions of these employees, but that Ms. Miskulin refused to take any disciplinary action toward these employees. Appellant stated that Ms. Miskulin, on one occasion, approached her desk and began yelling at her to change her attitude. She contacted her union steward, at which point Ms. Miskulin began to behave in an intimidating and harassing manner, creating a hostile working environment. She alleged that she began to receive unattainable deadlines, was deliberately overworked, was unfairly questioned about her lunch breaks and began to receive harassing telephone calls at home and at work. Appellant also claimed that documents disappeared from her desk and files were missing. She further alleged that her voice mail was improperly accessed, which constituted a violation of her privacy and that all of these distractions created delays and resulted in a backlog, which adversely affected her performance. Appellant also claimed that Ms. Miskulin left critical notes on her desk, which were visible to coworkers passing by and exposed her to humiliation. She stopped work on October 4, 1993.¹

¹ Appellant was terminated by the employing establishment, effective April 20, 1994, because of unavailability for work. She was hired on October 19, 1992 for a one-year appointment.

On April 26, 1995 the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant's psychiatric condition had arisen in the performance of duty. The Office found that appellant's emotional reactions to incidents regarding performance notes and reviews, the granting of leave, the scheduling of breaks and lunch hours and the assignment of work and training were not covered under the Federal Employees' Compensation Act as these were administrative matters. By decisions dated May 31, 1996 and March 31, 1997, the Office denied modification of the April 26, 1995 decision. In a decision dated July 14, 1999, the Board affirmed the Office's March 31, 1997 decision, finding that appellant failed to meet her burden of proof in establishing that her anxiety disorder was caused by work factors.²

By letter dated July 6, 2000, appellant requested reconsideration. She submitted copies of emails regarding leave and assignments, leave applications, a February 8, 1994 statement from a coworker, Katherine Kruse and a performance evaluation covering the period October 1993 through April 1994.

By decision dated November 8, 2000, the Office found that appellant did not submit evidence sufficient to warrant modification of the previous Office decisions.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.³ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁴

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability.

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

² Docket No. 97-2635 (issued July 14, 1999).

³ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁴ See *Ruth C. Borden*, 43 ECAB 146 (1991).

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

do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁶

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that her supervisor or coworkers engaged in a pattern of harassment. Appellant has alleged, in general terms, harassment from her coworkers and supervisors, but has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations.⁷ She has not submitted any factual evidence to support her allegations that she was harassed, mistreated, or treated in a discriminatory manner by her supervisors. To that end, appellant failed to establish that her supervisors or coworkers threatened or verbally abused her or otherwise ridiculed her by placing derogatory notes on her desk during the periods and dates she alleged these episodes to have occurred. The Office properly found that the allegations made by appellant concerning the emails, notes and documents allegedly placed on her desk by her supervisor and coworkers for the purpose of humiliating her were not established as factual by the weight of evidence of record. Further, although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.⁸ Appellant has not shown how such isolated comments would rise to the level of verbal abuse or otherwise fall within the coverage of the Act,⁹ nor has appellant provided factual support for her allegations that her supervisors created a hostile work environment.¹⁰ The February 8, 1994 statement by Ms. Kruse contains essentially the same allegations made by her in a much more extensive statement dated December 1996, which was considered by the Board in its July 14, 1999 decision. Ms. Kruse generally claims in her February 8, 1994 statement that the employing establishment engaged in a pattern of harassment and intimidation of appellant, but fails to support these allegations with probative evidence.¹¹

The Office reviewed all of appellant's specific allegations of harassment, abuse and mistreatment and found that they were not substantiated or corroborated. To that end, the Board finds that the Office properly found that the episodes of harassment cited by appellant did not factually occur as alleged by appellant, as she failed to provide any corroborating evidence for her allegations. As such, appellant's allegations constitute mere perceptions or generally stated

⁶ *Id.*

⁷ See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

⁸ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

⁹ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

¹⁰ *Merriett J. Kauffmann*, 45 ECAB 696 (1994).

¹¹ The Board found in its July 14, 1999 decision that, although Ms. Kruse's allegations may have indicated a lack of cordiality and a tense relationship at work, this was not compensable under the Act. See *Daniel B. Arroyo* 48 ECAB 204 (1996).

assertions of dissatisfaction with a certain superior at work, which do not support her claim for an emotional disability.¹² For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

The Board further finds that the administrative and personnel actions taken by management in this case contained no evidence of the employing establishment error or abuse and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.¹³

In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error or abuse with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. As to appellant's allegation that management overburdened her with an excessive work load and gave her unreasonable deadlines, appellant did not provide any evidence that the employing establishment acted in an abusive or unreasonable manner in setting performance guidelines for her. Thus, these actions on the part of management did not constitute a factor of employment.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.¹⁴ However, appellant has not submitted evidence indicating that the employing establishment imposed an unusually heavy work load and unreasonable deadlines.¹⁵

The Board notes that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage.¹⁶ However, appellant has submitted no evidence indicating that the employing establishment committed error or abuse or that its actions in this instance were unreasonable.

Accordingly, a reaction to such factors did not constitute an injury arising within performance of duty. The Office properly concluded that in the absence of the employing establishment's error or abuse such personnel matters were not compensable factors of employment.

¹² See *Debbie J. Hobbs*, *supra* note 3.

¹³ See *Alfred Arts*, *supra* note 9.

¹⁴ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

¹⁵ Compare *Kennedy*, *supra* note 14

¹⁶ *Margreate Lublin*, 44 ECAB 945 (1993).

The decision of the Office of Workers' Compensation Programs dated November 8, 2000 is hereby affirmed.

Dated, Washington, DC
August 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member