

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY C. PLUMMER and DEPARTMENT OF THE ARMY,
EVANS ARMY COMMUNITY HOSPITAL, Fort Carson, CO

*Docket No. 01-1732; Submitted on the Record;
Issued December 23, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition causally related to compensable factors of her employment.

On December 1, 1999 appellant, then a 63-year-old registered nurse, filed an occupational disease claim alleging that she developed major depression and anxiety because she was told in April 1994 that she could transfer to the psychiatric unit of the hospital but learned that she would have to apply for the position, which was later denied. In March 1995 appellant's supervisor told her that she was going to supervise the preadmission clinic but she was later advised that she would not be in charge. Appellant's GS-10 rating was reduced to a GS-9 and she was denied a supervisory position. On August 15, 1995 appellant was harassed when she did not sign a blank evaluation form for her performance evaluation and was threatened with being sent to a ward where she had previously worked. On February 23, 1999 Captain Kelly Peroutka humiliated appellant by asking her in a demeaning tone of voice to obtain a chest x-ray for a patient's chart before she went off duty. Appellant was charged with being absent without leave (AWOL) for attending an in-service preretirement class on May 12, 1999. On August 26, 1999 appellant was unable to attend a memorial service for a former coworker because her evaluation was being performed that day and she worked 15 minutes past the end of her shift without compensation. On September 10, 1999 she received a counseling statement after a loud argument with Sergeant Daniel Alexander and was placed on observation for one year. Appellant's supervisor counseled her about her performance of her electrocardiogram (EKG) duties. On October 28, 1999 she had to work alone because two registered nurses had called in sick and the regular secretary was also on sick leave. On October 29, 1999 appellant was reprimanded for making changes in the patient appointment book and calling patients to change their scheduled appointments. On November 2, 1999 appellant was denied sick leave for a dental appointment. She indicated that she first became aware of her condition in June 1995.

In a memorandum dated May 18, 1999, Captain Peroutka, a head nurse, requested disciplinary action for appellant because she attended preretirement classes on May 11 and 12,

1999 but had only been given permission to attend on May 11, 1999 because there was no one else available to work on May 12, 1999.

On June 14, 1999 appellant received a letter of reprimand for attending the preretirement classes on May 12, 1999 without permission and missing work.

In a counseling form dated September 22, 1999, Patricia Gustafson stated that appellant was involved in a loud argument with Sergeant Alexander on September 10, 1999, that both parties engaged in inappropriate behavior and appellant's conduct would be monitored for one year.

In a memorandum dated November 2, 1999, Captain Elaine Wilson, a head nurse, stated that appellant told her that she was leaving at noon for a dental appointment noon. Appellant had not submitted a leave request so Captain Wilson asked her to submit a leave request and she would see if appellant's request could be accommodated. No one was available to work in place of appellant and Captain Wilson asked if appellant could call her dentist and reschedule her appointment for later in the afternoon. Appellant refused to try to reschedule and was told that she would be charged as being AWOL if she left without approved leave. Appellant started to leave work at 8:50 a.m. and Captain Wilson asked a supervisor for assistance. After checking the staffing schedule, Captain Wilson agreed to allow appellant to leave at 1:00 p.m. as her appointment was not until 2:00 p.m. but appellant wanted to leave at noon to go home and change clothes and eat before her appointment. Captain Wilson could not approve a departure time of noon due to staffing requirements and asked appellant to submit a leave request for 1:00 p.m. She stated that appellant was hostile, disrespectful and unwilling to compromise.

In a statement dated December 14, 1999, Captain Wilson stated that she became appellant's supervisor in July 1999. She stated that during a counseling session on August 26, 1999 appellant never mentioned that she wished to attend a memorial service that day. Captain Wilson stated that appellant failed to complete some electrocardiograms and failed to note a significant change in one and that missing vital tests on preoperative patients could lead to poor patient outcomes and possible death. Captain Wilson stated that the incident on September 10, 1999 involving appellant and Sergeant Alexander had been resolved after intervention by management and the union.

By decision dated February 24, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an emotional condition causally related to compensable factors of employment. The Office found that appellant's allegations concerning August 15, 1995 and October 28, 1999 were not established as factual and the remaining allegations concerned employment factors that were not compensable.

In an undated letter, received by the Office on March 27, 2000, appellant requested an oral hearing.

In a statement dated September 13, 1999, Sergeant Alexander stated that on September 10, 1999 he indicated to appellant that she had been rude to a coworker, Jacqueline Booker and he and appellant had a loud argument.

On August 30, 2000 a hearing was held at which appellant testified.

In a statement dated September 21, 2000, Captain Wilson noted that when she was filling a GS-10 position none of the referral lists received from the civilian personnel office contained appellant's application or resume, appellant had never told her that she wished to seek another position and the civilian personnel records showed that appellant had not submitted any applications for job vacancies. She stated that appellant's testimony at the hearing that she had acted in a supervisory capacity and had trained others was not true and she did not have the qualifications for a supervisory position. Captain Wilson stated that appellant was not the only employee who had received counseling regarding job performance or requested to provide medical documentation for absences or counseled sick leave.

In a memorandum dated September 29, 2000, Paula Stoner, an employing establishment human resource officer, stated that appellant was changed from a GS-10 position to a GS-9 position due to restrictions relating to her work-related carpal tunnel syndrome but her pay was not reduced. She stated that appellant was able to apply for any position for which she felt qualified and was able to perform with her work restrictions.

By decision dated November 20, 2000 and finalized on November 28, 2000, the Office hearing representative affirmed the Office's February 24, 2000 decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition causally related to compensable factors of her employment.

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 his 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.¹ 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.²

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.³ 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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Thomas D. McEuen*, 41 ECAB 387(1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *See Effie O. Morris*, 44 ECAB 470, 473 (1993).

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.⁵ 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.⁶

Regarding appellant's allegations that the employing establishment unfairly reduced her rating from GS-10 to GS-9, charged her with being AWOL, wrongly denied leave and counseled and disciplined her regarding her job performance, 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.⁷ Although such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁸ 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 determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹

In a memorandum dated May 18, 1999, Captain Peroutka requested disciplinary action for appellant because she attended preretirement classes on May 11 and 12, 1999 but had only been given permission to attend class on May 11, 1999 because there was no one else available to work on May 12, 1999. On June 14, 1999 appellant received a letter of reprimand for attending the preretirement classes on May 12, 1999 without permission and missing work.

In a counseling form dated September 22, 1999, Ms. Gustafson stated that appellant was involved in a loud argument with Sergeant Alexander on September 10, 1999, that both parties engaged in inappropriate behavior and appellant's conduct would be monitored for one year.

In a statement dated September 21, 2000, Captain Wilson stated that appellant was not the only employee who had received counseling regarding job performance or was asked to provide medical documentation for absences greater than three days or take sick leave only for the time needed to attend a doctor's appointment rather than for the entire day.

⁵ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁶ *Id.*

⁷ See *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁸ See *Anne L. Livermore*, 46 ECAB 425, 431-32 (1995); *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ *Id.*

In a memorandum dated September 29, 2000, Ms. Stoner, an employing establishment human resource officer, stated that appellant was changed from a GS-10 position to a GS-9 position due to restrictions relating to her work-related carpal tunnel syndrome but her pay was not reduced.

The evidence of record is insufficient to establish that the employing establishment erred or acted abusively or unreasonably in its handling of these administrative or personnel matters. Thus, appellant has not established a compensable employment factor under the Act in regard.

Regarding appellant's allegation of denial of promotions and transfers, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.¹⁰ Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has also alleged that harassment and discrimination on the part of her supervisors 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.¹¹ 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.¹² In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.¹³

Appellant alleged that she was harassed on August 15, 1995 when she did not sign a blank evaluation form and was threatened with being sent back to a ward where she had worked previously. She alleged that on February 23, 1999 Captain Peroutka humiliated her by asking in a demeaning tone of voice to obtain a x-ray for a patient's chart before she went off duty. Appellant alleged that on August 26, 1999 she could not attend a memorial service for a former coworker because her performance evaluation was being performed that day and that she was also kept 15 minutes past the end of her shift without compensation.

In a statement dated December 14, 1999, Captain Wilson stated that during a counseling session on August 26, 1999 appellant never mentioned that she wished to attend a memorial service on that day.

¹⁰ See *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹¹ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² See *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ 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).

Regarding the allegations of harassment on August 15, 1995 and February 23, 1999, appellant had not submitted sufficient information and, therefore, these allegations are not deemed compensable factors of employment.

The evidence of record is insufficient to establish appellant's allegations that the employing establishment harassed her. Thus, appellant has not established a compensable factor in this regard.

Appellant alleged that she had to work alone on October 28, 1999 because three employees were on sick leave. However, she failed to provide sufficient information regarding this allegation. Therefore, it cannot be deemed a compensable factor of employment. Furthermore, as previously noted, disability is not covered where it results from frustration from not being permitted to work in a particular environment.¹⁴

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁵

The decision of the Office of Workers' Compensation Programs dated November 28, 2000 is affirmed.

Dated, Washington, DC
December 23, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁴ See *Eileen P. Corigliano*, 45 ECAB 581, 583-84 (1994).

¹⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).