

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERINE A. BERG and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Erie, PA

*Docket No. 02-2096; Submitted on the Record;  
Issued December 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

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

On July 20, 2001 appellant, then a 49-year-old file clerk, filed a claim for an emotional condition, which caused disability beginning May 31, 2001. In an accompanying statement, appellant noted that she had suffered from alcoholism for many years. She stated that she never received employment assistance even though she received numerous disciplinary actions and counseling. Appellant indicated that she started seeing a psychologist in June 1999. She kept working in the file room but felt unhappy. She noted that she slept 10 to 14 hours a day and was placed on medication. Appellant stated that there was a heavy workload at the employing establishment, which required considerable bending and lifting. She indicated that she began to have back and shoulder pain from pulling down charts. She commented that she tried to keep up her work but her coworkers made negative comments about her. She noted a constant tension with her coworkers. Appellant stated that in June 2000 a coworker requested that appellant be removed from the file room. She indicated that she was assigned other duties and, in November 2000, was placed on a detail in the eligibility department. She recalled that she performed well in that department and received many compliments. When the detail ended in February 2001, she was returned to the file room. She stated that because of the tense conditions in the file room, she requested that her hours of work be changed to 4:00 p.m. to midnight. Appellant claimed that the change in schedule was to last only for one month while her supervisor attempted to find her another position. She indicated that she was only offered a job as a switchboard operator, which would prevent her from attending her alcoholics anonymous meetings. She also commented that the switchboard operator position was very stressful because the operator must act as an information desk to visitors, sound alarms and announce code blue situations as well as answer numerous calls. She stopped working on May 31, 2001 and was still working the 4:00 p.m. to midnight shift. She submitted a copy of her February 25, 2001 memorandum requesting a shift change to 4:00 p.m. to midnight for Wednesday through Friday, 7:00 a.m. to 3:30 p.m. on Saturday and 10:00 a.m. to 6:00 p.m. on Sunday.

Appellant submitted medical reports in support of her claim. In an October 14, 1999 report, Dr. Debora Radder, a Board-certified family practitioner, stated that appellant was having insomnia after she stopped drinking three months previously. Dr. Radder noted that appellant was feeling more positive and happy about her lifestyle changes. She attributed appellant's insomnia to alcohol withdrawal.

In a February 20, 2001 report, Dr. Ted S. Urban, a psychologist, stated that he had been treating appellant for depression and anxiety. Dr. Urban noted that appellant had improved in the prior six months but the recent shift and change in her work assignment and environment had caused a significant degree of agitation and new symptoms of anxiety and sleeplessness. He requested a job change for appellant and indicated that if a change was not possible, appellant might seek an official medical leave of absence.

In a March 15, 2001 report, Dr. Radder stated that appellant had stressful work relationships, which were aggravating her symptoms. She related that appellant's job had been changed recently because of complaints about her by coworkers. She noted that appellant's coworkers were all men. Dr. Radder commented that appellant felt the men no longer liked her because, to deal with her past problems she had changed her responses to them since she had begun counseling. She indicated that appellant had not received a negative performance review but had been taken out of her office to get away from her coworkers.

In a May 29, 2001 report, Dr. Urban diagnosed major depression, alcohol dependence and dysthymic disorder. He indicated that appellant had to deal with constant, unremitting work stress which stemmed from her duties and placement in the employing establishment file room. He commented that the nature of the tasks and the intense, bombastic attitudes and styles of her coworkers had crushed her spirit and caused chronic, disruptive stress, worry and a new wave of clinical depression and anxiety. Dr. Urban noted that appellant had proven in a four-month assignment that she was able to handle normal work demands. He stated, however, that appellant returned to the file room at the end of the detail and her supervisors refused to adjust her assignment. He indicated that appellant's deteriorating condition, including increased depression, anxiety, total isolation, withdrawal and excessive sleeping posed a major threat to her health. He stated that the unusual demands of her current assignment, on a 4:00 p.m. to midnight shift, caused extreme stress and disruption of her sleep schedule. He indicated that appellant suffered from depression and a severe sleep disturbance. He suggested that the assignment as an eligibility clerk which provided a familiar routine, low stress and day time hours, was an example of an acceptable position.

In a January 16, 2002 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she had failed to establish that she sustained a personal injury in the performance of her duties.

In a February 2, 2002 letter, appellant requested reconsideration. She stated that her removal from the file room at the request of a coworker was not a perception but a fact. Appellant claimed that she had met her burden of proof in establishing a causal relationship between her employment and her emotional condition. She stated that her supervisor had refused to give a statement on why she was removed from her position. Appellant noted that her condition worsened when she was placed back in the file room after her detail assignment.

In a May 10, 2002 merit decision, the Office denied appellant's request for modification of the January 16, 2002 decision.

The Board finds that appellant has not established that his emotional condition arose in the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. 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. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>1</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>2</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>3</sup>

Appellant claimed that she was exposed to negative comments from her coworkers and was forced to change work assignments at the request of a coworker. Appellant has alleged harassment by her coworkers. The actions which an employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be evidence that such implicated acts of harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.<sup>4</sup> Appellant did not give any specific examples of the harassment she received from her coworkers and the evidence of record does not substantiate her allegations. She, therefore, did not establish such harassment occurred and formed a compensable factor of her employment.

Appellant also contended that the change in work assignments, particularly the end of her detail assignment and the return to the file room, affected her emotional condition. Such a change in assignments and the reaction to the change was a frustration in not holding a particular

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

<sup>3</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>4</sup> *Joan Juanita Greene*, 41 ECAB 760 (1990).

position or being permitted to work in a particular environment. This factor, therefore, does not constitute a compensable factor of employment.

Dr. Urban in his May 29, 2001 report, stated that the change in appellant's work shift caused extreme stress for appellant because it created a disruption of appellant's sleep schedule. The Board has held that a change in an employee's duty shift may be a factor of employment to be considered in determining whether an injury has been sustained in the performance of duty.<sup>5</sup> In this case, the evidence shows that appellant requested a change in shift. This action, by itself, does not bring the shift change within the compensable factors of employment because the change was based on appellant's request to work in a different environment. Appellant's preference to perform the duties of her detail assignments and desire for a different shift constitute a self-generated frustration at not being allowed to work the job duties or hours she preferred.<sup>6</sup> There is also no evidence to establish error or abuse on the part of the employing establishment in making the job assignments. Dissatisfaction with the type of work assigned, or desire to perform different duties, does not come within coverage of the Act.<sup>7</sup>

For this reason, the Board finds that appellant has not established that her emotional condition arose within the performance of duty. For this reason, it is unnecessary to consider the medical evidence of record.<sup>8</sup>

The decisions of the Office of Workers' Compensation Programs, dated May 10 and January 16, 2002, are affirmed.

Dated, Washington, DC  
December 23, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> See *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>6</sup> See *Gloria Swanson*, 43 ECAB 161 (1991).

<sup>7</sup> See *Purvis Nettles*, 44 ECAB 623 (1993).

<sup>8</sup> See *John Polito*, 50 ECAB 347 (1999).