

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA M. PORTER and DEPARTMENT OF THE NAVY, FLEET
NUMERICAL OCEANOGRAPHY & METEOROLOGY CENTER, Monterey, CA

*Docket No. 01-460; Submitted on the Record;
Issued February 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of her duties.

On June 27, 1999 appellant, then a 43-year-old computer specialist, filed an occupational disease claim asserting that her stress, depression and fibromyalgia were a result of her federal employment. She explained that she would constantly be in tears after a meeting, that she had sleepless nights and that her stomach would be in knots as she approached a meeting with supervisors.

Appellant submitted a statement describing the employment factors to which she attributed her condition:

“Differential treatment, constant belittling of myself by my supervisors, unable to speak without their analyzing every word I said or submitting proof, stringent deadlines and workload. Reporting my time hour by hour and still their asking why didn't I do such and such. Not treating the other coworkers the same. Their not recognizing the good things I had done to better the quality of work.”

Appellant explained that her troubles began when she came under the supervision of Evangeline R. Forrest, that her efforts were never satisfactory enough for her supervisors. Appellant stopped work in May 1998 because of upper extremity complaints.¹ When she returned to work in September 1998 her supervisors gave her a new task list with due dates. Appellant advised that she would have trouble meeting the deadlines. Her supervisors told her she would also have to catch up with tasks that remained unfinished since she stopped work in May 1998.

¹ The record indicates that appellant had a prior claim, File A13-1162564, that was accepted for a bilateral wrist condition.

Appellant stated that when she missed turning in a leave slip, Ms. Forrest threatened to charge her as absent without leave and possibly fire her. She alleged that Ms. Forrest call her at home on a few occasions while she was on sick leave. Appellant's rheumatologist released her to return to part-time work with little use of the computer, but no part-time positions were available. She was removed from her position effective May 31, 1999 because she was unavailable for work due to medical reasons.

The record shows that appellant contacted the Federal Occupational Health Employee Assistance Program (EAP) on February 9, 1998: "Client seeks service re: work stress. She said that she has gotten back feedback from her supervisor that she is not working hard enough and that she is constantly making mistakes." The report of her first counseling session on February 11, 1998 read as follows:

"'I'm having problems at work.' 'Twenty years experience (in civil service elsewhere), I came up here 3 years ago and supervisors have given me more work than I can complete.' ? (duration) 'Since July,' ? (connecting incident) 'I made out a 'problem report' about a computer program that did [not] work and the author of that program yelled at me. Since then work relationships have been deteriorating.'"

Appellant stated that, after being yelled at, she was given more tasks than she could finish, she was criticized and she was told to take classes in writing and critical thinking.

On September 13, 1999 the employing establishment responded that it disagreed with appellant's allegations that she was treated unfairly or in an abusive manner. As with other employees, she was given target dates for the completion of specific assignments and her workload was comparable to that of other GS-12 computer specialists. No extraordinary demands beyond that of a typical GS-12 computer specialist were ever imposed on appellant. She was offered the opportunity to attend class at the Naval Postgraduate School on work time in order to improve her professional skills, thereby helping her performance. There was no cost for these courses, but appellant was expected to study on her own time.

The employing establishment added that all personnel in appellant's division were required to provide the supervisor with a weekly report of daily activities. The employing establishment stated that it did not threaten its employees. Appellant was advised of the possible consequences of not following the timekeeping procedures required of all employees. This followed her not reporting for work after her doctor's slip expired and no additional slip was provided. Appellant's supervisor telephoned her to find out if she would be returning to work or if she had another doctor's slip. She later delivered an additional doctor's slip. The employing establishment advised that there were no part-time computer specialist positions.

In a decision dated August 4, 2000, the Office denied appellant's claim on the grounds that she did not sustain her emotional condition while in the performance of duty. The Office found that none of the incidents cited by appellant were considered to be employment factors. The Office also found that the medical evidence offered no opinion on the issue of causal relationship and was based either on factors not considered to be employment related or on factors not established as factual.

The Office accepted as factual that following her return to work in September 1998 appellant received new performance standards that required completion of 40 hours of professional technical education/training in statistical analysis or mathematics that were prerequisite to statistical analysis courses, with a coursework grade of C or better. During the discussion about her supervisor's expectations, appellant expressed her concern about meeting the deadlines included in the performance elements. The Office accepted that, during appellant's absence from work, her work was assigned to two coworkers and a summer intern. When appellant returned she learned that the work had not been completed because her coworkers did not know how to enter data or produce graphs using the Excel format. Appellant was later instructed to teach one of the coworkers how to use the Excel program. The Office further accepted as factual that appellant felt that she had to stay longer, come in early or work during her lunch in order to complete her assignments.

The Office found, however, that being required to complete 40 hours of training in technical education and being assigned to train a coworker concerned administrative and personnel matters that were a function of the employer, not a duty of the employee.

Although appellant was given a performance plan that covered July 1, 1998 to June 30, 1999 and that contained deadlines, she worked approximately 87 hours from September 17 to October 2, 1998 and made no attempt to perform her new duties. The Office found that her apprehension that she would not be able to meet the deadlines was self-generated and not compensable.

The Office noted that putting in extra hours was voluntary due to appellant's feelings of insecurity and her perception that she could not attend class and keep up her productivity. There was no evidence that she was requested to put in extra time or that she was not able to keep up with her duties. The Office found that appellant's reaction in this regard was self-generated.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of her duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.² An employee's emotional reaction to an administrative or personnel matter, for instance, is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.³ Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁴

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Margreate Lublin*, 44 ECAB 945 (1993); *Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon.*, 41 ECAB 387 (1990).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant attributes her emotional condition in part to the actions of her direct supervisor and team leader. She has submitted no evidence, however, to support her allegations of differential treatment or discrimination or constant belittling. Appellant has submitted no evidence, apart from her own assertions, to support error or abuse or unreasonable conduct in any administrative or personnel action taken with respect to matters of leave, supervisory feedback, performance appraisals or promotions. The employing establishment denied that appellant was treated unfairly or in an abusive manner. Without persuasive evidence to the contrary, appellant has failed to establish a factual basis for such allegations.

Although appellant has failed to establish error or abuse or unreasonable conduct on the part of her supervisors, the record is sufficient to establish other compensable factors of employment.

When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work.⁵

In this case, appellant attributes her emotional condition in part to deadlines and workload. The employing establishment confirmed that she was given target dates for the completion of specific assignments. The Office accepts as factual that appellant felt that she had to stay longer, come in early or work during her lunch in order to complete her assignments. Appellant received a lower appraisal for the period ending June 30, 1998 than she had the prior year. And when she discussed her new performance standards with her supervisor, she expressed her concern about meeting the deadlines included in the performance elements. The new performance standards required her to complete 40 hours of professional technical education/training. Appellant also was instructed to teach a coworker how to use a spreadsheet program.

The issue is whether appellant experienced emotional stress in carrying out her employment duties or had fear and anxiety regarding her ability to carry out her duties.⁶ The factual evidence supports that she did experience such emotional stress and that she did have such fear and anxiety. The Board will therefore, modify the Office's August 4, 2000 decision to find that appellant has established compensable factors of employment with respect to her work deadlines and regular assigned duties.

Appellant's burden of proof is not discharged by the fact that she has established compensation factors of employment. To establish her occupational disease claim for an emotional condition, she must also submit rationalized medical opinion evidence establishing

⁵ *Lillian Cutler, supra* note 3.

⁶ *Id.*

that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.⁷

Causal relationship is a medical issue⁸ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factors of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific, established factors of employment.⁹

Appellant has submitted no such medical opinion evidence. The record contains no narrative medical report from a qualified physician explaining, from a psychological or psychiatric perspective, how appellant's deadlines or workload caused or contributed to a diagnosed emotional condition. This is an essential element of appellant's claim and with no reasoned medical opinion to support causal relationship, appellant has not met her burden of proof.¹⁰

⁷ *William P. George*, 43 ECAB 1159, 1168 (1992).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *See Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ The lack of any reasoned medical opinion on causal relationship is also fatal to any claim for the condition of fibromyalgia.

The August 4, 2000 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Dated, Washington, DC
February 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member