

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY N. MONIA and SOCIAL SECURITY ADMINISTRATION,
WILSHIRE FIELD OFFICE, Los Angeles, CA

*Docket No. 01-474; Submitted on the Record;
Issued February 7, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On September 16, 1999 appellant, then a 39-year-old claims development clerk, filed a claim for an injury on June 30, 1999 when she had an anxiety attack. She alleged that her supervisors questioned her regarding the amount of time it would take her to perform one of her assignments, screamed at her, pointed fingers at her and would not allow her to leave the office. Appellant stopped work on June 30, 1999 and returned to work on July 6, 1999.

In a report dated February 9, 1999, a clinical psychologist diagnosed an anxiety disorder.

A June 30, 1999 entry in the employing establishment's Guard Operations Log indicated that supervisor Pat Ramos went to the lunch room to tell appellant that she had a telephone call and appellant responded in a loud and rude manner that she was at lunch. Later that day appellant notified the guard that her doctor might send paramedics to the employing establishment and they arrived shortly thereafter. Appellant did not leave with the paramedics but left the office.

In a statement dated July 14, 1999, Ms. Ramos stated that on June 30, 1999 appellant was asked to answer the telephones and later asked to be relieved of telephone duty because she had some work to perform. Because the office was shorthanded, Ms. Ramos asked her how long the work would take so she would know when appellant could return to answer the telephones. Appellant stated that the work could take the rest of the day and possibly the next day and Ms. Ramos was concerned because she needed help covering the telephones. She asked appellant if her immediate supervisor, Pat Flores, was aware of the workload. Appellant then went to Ms. Ramos' office and Ms. Flores happened to be there on an unrelated issue. Appellant asked Ms. Ramos why she had questioned her about her work and was "defensive," questioning unrelated matters, and would not allow Ms. Ramos to answer her questions. Ms. Ramos put the palm of her hand out towards appellant stating, "OK, Judy, let me answer your questions." She

denied that she screamed or pointed her finger at appellant in a threatening way and denied that Ms. Flores spoke to appellant. Appellant stated that assignment could take as little as one-half hour to complete and began to walk away but Ms. Ramos told her the conversation was not over and explained why she had questioned her. She asked if appellant understood and she nodded and was then told to return to work. Ms. Ramos stated that appellant did not appear to be ill but five minutes later the paramedics were called and appellant left.

In a statement dated August 19, 1999, appellant alleged that she had asked a computer worker for assistance and Ms. Ramos told her she was not allowed to talk to the computer workers. She alleged that Ms. Ramos later walked past her and “intentionally hit me with all the force she could with her body, she almost knocked me down.” Appellant filed a report with the police the next day. She stated that Ms. Ramos sometimes stood at her desk in a challenging way and tried to provoke arguments.

In an EEO (Equal Employment Opportunity) counseling report dated September 13, 1999, counselor Jim Buyck indicated that appellant alleged discrimination and harassment. He stated that management harassed appellant by requesting medical documentation for advanced sick leave in an August 10, 1999 letter.¹ Mr. Buyck stated that appellant was physically attacked by Ms. Ramos on August 19, 1999 who pushed her body into appellant as she walked past.

A police report dated August 20, 1999 initiated by appellant indicated that on August 19, 1999 Ms. Ramos pushed her body against appellant as they walked past each other after appellant told her that she had filed a discrimination complaint and appellant nearly fell to the floor. The officer taking the report offered appellant medical treatment that was declined and he noted that she had no visible injuries.

In a report dated October 13, 1999, Dr. Bruce Wasserman diagnosed an anxiety attack occurring on June 30, 1999 and checked the block marked “yes” indicating that the condition was causally related to appellant’s employment.

In a letter dated December 7, 1999 to the employing establishment area director, appellant stated that she was subject to harassment and discrimination by her supervisors. She alleged that she was the only employee who had to clock out for lunch. She alleged that supervisor Pat Talamantez screamed at her and told her to go home on December 6, 1999 when appellant told her that she intended to file a grievance.

By decision dated February 7, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that she had failed to establish that her emotional condition was causally related to compensable employment factors.

By letter dated February 19, 2000, appellant requested an oral hearing before an Office hearing representative.

¹ The record contains an August 10, 1999 letter in which Ms. Talamantez asked appellant to provide medical documentation previously requested on March 5, 1999 as well as a completed form from her physician regarding her claimed June 30, 1999 injury which had been requested on July 14, 1999. Appellant was advised that disciplinary action might be taken if she did provide the requested information.

On July 11, 2000 a hearing was held and appellant testified.

In a statement dated June 29, 1999, Ms. Talamantez denied that appellant's supervisors harassed her. She stated that appellant was a very difficult employee to supervise because she did not get along with other employees, frequently made personal telephone calls, used the computer for personal matters, and treated coworkers disrespectfully. Ms. Talamantez stated that appellant reacted defensively when management spoke to her about her behavior, blamed others, and rarely accepted responsibility for her actions. She stated that she tried to help appellant by giving her additional training, being liberal with her leave requests, and encouraging other employees to give her assignments but received complaints from other employees regarding appellant's behavior or complaints from appellant that she had been wronged in some way. Ms. Talamantez denied that she or Ms. Flores screamed at appellant or harassed her. She noted that appellant had requested a transfer but did not follow the proper procedures, that she had been suspended three times and appealed the third suspension to the Merit Systems Protection Board which upheld the suspension. Ms. Talamantez noted that appellant had expressed a desire to be promoted but was told that she could not be promoted unless she learned to cooperate with the other employees.

In a report dated April 3, 2000, Dr. Julie Crusor stated that appellant had reported harassment at work since April 1999 and opined that her anxiety disorder was caused by job harassment.

In a report dated July 27, 2000, Dr. H. William Winter stated that appellant had experienced problems with Ms. Talamantez and Ms. Flores who screamed at appellant and caused her to have an anxiety attack on June 30, 1999.

In a statement dated August 9, 2000, Ms. Talamantez stated that appellant had worked under seven supervisors since 1996 and had difficulties with all of them and was terminated on April 7, 2000 for rude and discourteous conduct. She noted that appellant alleged that the incident with Ms. Ramos and Ms. Flores on June 30, 1999 occurred behind closed doors but Ms. Ramos advised her that it occurred in her cubicle in view of a large part of the office but no one reported any screaming or yelling and did not know why the paramedics had been called. She denied that she had ever yelled or screamed at appellant.

By decision dated October 4, 2000, finalized on October 6, 2000, the Office hearing representative affirmed the Office's February 7, 2000 decision.²

The Board finds that appellant has failed to meet her burden of proof to establish that her emotional condition was causally related to 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

² This record contains additional evidence that was not before the Office at the time it issued its October 6 and February 7, 2000 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her 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.³ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

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.⁵ 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.⁶

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.⁷ 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.⁸

In this case, appellant attributed her emotional condition to a number of employment incidents and conditions. The Board must, thus, initially determine whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant's allegations regarding the employing establishment's questioning of the amount of time she needed to complete a particular assignment and its requests for medical documentation relate to administrative or personnel matters and are unrelated to the employee's regular or specially assigned work duties. Thus, they do not fall within the coverage of the Act.⁹ Although the handling of assignment of duties and requests for leave are generally related to the

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

⁷ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

⁸ *Id.*

⁹ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

employment, they are administrative functions of the employer, and not duties of the employee.¹⁰ 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 this case, the employing establishment denied that it erred or acted abusively in its handling of administrative or personnel matters and appellant has provided insufficient evidence of error or abuse. Appellant alleged that on June 30, 1999 she had an anxiety attack after her supervisors, Ms. Ramos and Ms. Flores, questioned her about the time it would take her to perform one of her assignments, screamed at her, pointed fingers at her and would not allow her to leave the office. However, in a statement dated July 14, 1999, Ms. Ramos disputed appellant's allegation. She stated that on June 30, 1999 appellant was asked to answer the telephones but later asked to be relieved of telephone duty because she had an assignment to perform. Because the office was shorthanded Ms. Ramos asked appellant how long the work would take so she would know when appellant could return to answer the telephones. Appellant stated that the work could take up to two days and Ms. Ramos was concerned because she needed help covering the telephones. Appellant went to Ms. Ramos' office and asked her why she had questioned her about her work but would not allow Ms. Ramos to answer her questions. Ms. Ramos put the palm of her hand out towards appellant and asked that she be given a chance to respond to appellant's questions. She denied that she screamed or pointed her finger at appellant in a threatening way and denied that Ms. Flores spoke to appellant. Ms. Ramos stated that appellant did not appear to be ill but five minutes later the paramedics were called and appellant left the office. In a statement dated August 9, 2000, Ms. Talamantez stated that appellant had worked under seven supervisors since 1996 and had difficulties with all of them and she was terminated on April 7, 2000 for rude and discourteous conduct. She noted that appellant alleged that the incident with Ms. Ramos and Ms. Flores on June 30, 1999 occurred behind closed doors but Ms. Ramos stated that it occurred in her cubicle in view of a large part of the office but no employee reported any screaming or yelling. Ms. Talamantez denied that she had ever yelled or screamed at appellant. Appellant also alleged that the employing establishment unreasonably asked for medical documentation to support requests for leave. The record contains an August 10, 1999 letter in which Ms. Talamantez asked appellant to provide medical documentation previously requested on March 5, 1999 as well as a completed form from her physician regarding her claimed June 30, 1999 injury which had been requested on July 14, 1999. Appellant was advised that disciplinary action might be taken if she did provide the requested information. As the employing establishment had apparently requested the medical information from appellant previously but she had not provided it, the employing establishment did not err or act abusively in making another request for the information or in advising that appellant might be subject to disciplinary action if she did not comply. The supervisors have denied any error or abuse in their handling of administrative or personnel matters and appellant has provided insufficient evidence to establish her allegations as factual. Thus, appellant has not established a compensable employment factor under the Act.

Appellant's also alleged unreasonable denial of promotions and requests for transfers by the employing establishment. 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

¹⁰ *Id.*

assigned work duties, but rather constitute appellant's desire to work in a different position.¹¹ Thus, appellant has not established a compensable employment factor under the Act.

Appellant has also alleged that harassment and discrimination on the part of her supervisors contributed to her emotional 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.¹² 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.¹³ In a letter dated December 7, 1999, appellant stated that she was subject to harassment and discrimination by her supervisors because she was the only employee who had to clock out for lunch. However, there is no evidence of record to establish this allegation as factual. She alleged that Ms. Talamantez screamed at her and told her to go home on December 6, 1999 when appellant told her that she intended to file a grievance. However, in a statement dated June 29, 1999, Ms. Talamantez denied that she or any of appellant's supervisors harassed her or screamed at her. As the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence, such as witness statements, to establish that she was harassed or discriminated against by her supervisors, she has not established a compensable employment factor under the Act.¹⁴

In a statement dated August 19, 1999, appellant alleged that Ms. Ramos walked past her and intentionally hit her with her body and almost knocked her down. The Board has recognized the compensability of physical threats and verbal aggression in certain circumstances.¹⁵ The record shows that appellant filed a report with the police but the police report merely states appellant's allegation of physical assault. In an EEO counseling report dated September 13, 1999, counselor Jim Buyck stated that appellant was physically attacked by Ms. Ramos on August 19, 1999 but does not indicate that there was any corroborating evidence such as witness statements. As appellant has provided insufficient evidence that the alleged assault actually occurred, this allegation cannot be deemed a compensable factor of employment.

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 while in the performance of duty.¹⁶

¹¹ See *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹² See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ 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).

¹⁵ See *Alton L. White*, 42 ECAB 666, 669-70 (1991) (recognizing the compensability of physical threats and verbal aggression).

¹⁶ Because 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).

The October 6 and February 7, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 7, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member