

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELDORA J. PARKER and DEPARTMENT OF THE ARMY,
NORTH ATLANTIC TREATY ORGANIZATION OFFICE,
Washington, DC

*Docket No. 00-2483; Oral Argument Held December 5, 2001;
Issued January 25, 2002*

Appearances: *Eldora J. Parker, pro se; Jim C. Gordon, Jr.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On June 20, 1999 appellant, then a 47-year-old secretary stenographer, filed an occupational disease claim, alleging that she experienced extreme stress-induced anxiety due to factors of her federal employment. Specifically, appellant alleged that her supervisor had been harassing her for over a year and that on April 22, 1999 after her supervisor yelled at her, she nearly had a nervous breakdown and experienced hypertension, low blood sugar, breathlessness and the inability to walk. Appellant stated that she was treated at the employing establishment's clinic and her private physician's office for stress related to her job, which was caused by her supervisor.

An April 22, 1999 narrative statement providing a description of the incidents that took place on that date accompanied appellant's claim. She alleged that Colonel David L. Fleming, her former supervisor, entered the office at 7:30 a.m. and did not speak to her as usual. Appellant further alleged that at 8:30 a.m., Colonel Fleming called her into his office using a harsh voice and asked her to have a seat. He told her that two black men had called her the day before and refused to leave a message. Colonel Fleming felt that the men had been rude to him because they did not leave a message. Appellant stated that Colonel Fleming yelled that he was going to have the line disconnected. She noted her suggestion to Colonel Fleming that he should have caller identification installed to determine the identity of callers and that he yelled at her and told her that he was not going to waste the government's money. Appellant stated that she began to feel like she was going to pass out and that she returned to her desk to take a sip of water and another hypertension pill. She also stated that she tried to telephone her husband to let

him know that she did not feel well and that she was tired of being harassed, but the telephone was off the hook.

At 9:30 a.m., appellant stated that she was on the telephone with her sister-in-law informing her that she was trying to reach her husband when Master Sergeant Sandy Petersen started to yell from across the room that Colonel Fleming was not harassing her. At 10:45 a.m. appellant stated that Master Sergeant Petersen continued to yell at her and that she asked Master Sergeant Petersen to lower her voice. Appellant indicated that she told Master Sergeant Petersen that she felt weak and that she was going to pass out. She attempted to telephone family members to let them know that she was ill. Appellant provided that after Master Sergeant Petersen made several telephone calls, a military police officer entered the office with his hand on his gun and asked for Master Sergeant Petersen. She noted that Master Sergeant Petersen allowed the officer to enter her office and slammed the door.

At 11:00 a.m., appellant stated that she left her office to go to the ladies' room and felt like she was going to pass out. She entered into the office of Terrence Johnson and Jennifer Prather, employing establishment employees, who gave her a cup of water and called an ambulance. Appellant noted that upon the arrival of the ambulance she received treatment for low blood sugar and very high blood pressure by military personnel. She further noted that she received medical treatment at the civilian clinic. Appellant stated that at 12:00 p.m. she was told to go home for the day and that later that day she was treated by her private physician for stress-induced anxiety and hypertension. Appellant stated that on April 23, 1999 she returned to her physician's office for a check-up and her physician wrote Colonel Fleming a statement indicating that she would need to be away from her job environment and under his care due to her medical condition, which was caused by her work environment.

Appellant stated that her brother, Willie Joe Hall, died on April 24, 1999. She alleged that her supervisor denied her request for advanced leave and that she was placed on leave without pay. Appellant filed a complaint with the Equal Employment Opportunity Commission (EEOC) against Colonel Fleming.

Appellant's claim was also accompanied by documents regarding the funeral services of her brother, a statement from her social worker, medical evidence, documents regarding her request for advanced annual and sick leave and leave slips. A July 7, 1999 statement of Colonel Fleming provided that an incident did occur on April 22, 1999 that caused appellant to become agitated and to leave the office. Colonel Fleming stated that since that time, appellant had requested advanced sick and annual leave to allow her to better cope with the situation. He further stated that he approved each of appellant's requests since April 22, 1999 by approving 160 hours of advanced sick leave and 120 hours of advanced annual leave. In addition, Colonel Fleming noted that he received medical documentation from appellant's physician indicating that she was expected to make a full recovery on July 6, 1999 and that her medical condition, which included hypertension did not negatively impact her assigned duties and a stress disorder that was potentially brought on by her immediate environment at work and home.

In an October 15, 1999 letter, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit additional factual and medical evidence supportive of her claim.

By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

In a November 9, 1999 response letter, appellant alleged she was harassed by Colonel Fleming while she was on sick leave in that he called her and made statements that she needed to hurry back to work because there was a war going on. She further alleged that Colonel Fleming refused to grant her advanced sick leave and he placed her on leave without pay and he prepared to have her classified as absent without official leave. Appellant noted stressful incidents outside her employment, which included her husband's open-heart surgery and the death of her brother. Appellant stated that neither Colonel Fleming nor Master Sergeant Petersen expressed any type of sympathy for the harassment, her brother's death and husband's surgery. She alleged that in December 1998, while she was working on her computer and practicing some of the things that she had learned in a computer class, Colonel Fleming stood over her and yelled at her to get up and let him show her why he sent her to school. Appellant stated that she cried in another computer class in December 1998 due to the way Colonel Fleming always yelled and belittled her. She also stated that her computer instructor, Dale Lloyd, advised her to file a complaint against Colonel Fleming, which she subsequently filed. Appellant indicated that she never had or received any medical treatment for an emotional condition prior to the incidents involving Colonel Fleming. She also indicated that she had never experienced harassment or discrimination.

Appellant's letter was accompanied by a description of her secretarial position, medical evidence, a table of contents, a list of witnesses and a statement signed by Mr. Littlejohn and Ms. Prater indicating that she seemed distraught and received medical treatment on April 22, 1999.

By decision dated July 17, 2000, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty.

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.¹

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Appellant primarily alleges that her emotional condition was caused by harassment and discrimination from her supervisor, Colonel Fleming and Master Sergeant Petersen. The Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment, may constitute a factor of employment giving rise to a compensable disability under the Act. For harassment to give rise to a compensable disability there must be evidence that harassment or discrimination did, in fact, occur.⁴ Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.⁵ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁶ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁷

Appellant has not submitted sufficient evidence to support her allegation that she was harassed and discriminated against by Colonel Fleming and Master Sergeant Petersen on April 22, 1999. There is no evidence in the record establishing that Colonel Fleming and Master Sergeant Petersen yelled at appellant and made derogatory racial remarks, that they did not express any sympathy for appellant's family and that Colonel Fleming telephoned appellant while she was on sick leave to tell her to return to work because a war was going on. The statement of Mr. Littlejohn and Ms. Prater indicating that appellant appeared to be distraught does not indicate that they witnessed any harassment or discriminatory actions by either Colonel Fleming or Master Sergeant Petersen. Colonel Fleming stated that he gave appellant appropriate treatment at all times and offered assistance to her family. Because appellant has failed to submit sufficient evidence to support the above allegations, the Board finds that she has failed to meet her burden of proof.

The Board further finds that the record does not support appellant's allegation that Colonel Fleming harassed her by requiring her to lift a heavy desk and was hurt by this request. Although Mr. Devore stated that he heard Colonel Fleming tell appellant to lift a desk, Colonel

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁵ *See Lorraine E. Schroeder*, 44 ECAB 323 (1993); *Sylvester Blaze*, 42 ECAB 654 (1991).

⁶ *William P. George*, 43 ECAB 1159 (1992).

⁷ *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

Fleming denied giving appellant a “hard time” about moving the desk. The Board finds that Mr. Devore’s statement is not sufficient to establish harassment on the part of Colonel Fleming.

In response to appellant’s allegation that Master Sergeant Petersen harassed her by sending a chain letter and by giving out her unlisted telephone number, Master Sergeant Petersen acknowledged that she sent appellant the chain letter, but explained that she told appellant not to send any money because she thought it was illegal and that she advised appellant to tear up the letter. She further explained that she gave out appellant’s telephone number out of concern for her family’s health problems and that she did not know appellant’s number was unlisted. The Board finds that appellant has failed to establish that she was harassed by Master Sergeant Petersen.

Regarding appellant’s allegation that her request for advanced sick and annual leave were denied by Colonel Fleming, the Board finds that this allegation relates to administrative or personnel matters,⁸ which do not constitute compensable factors of employment under the Act absent evidence of error or abuse.⁹ Appellant has not submitted evidence establishing error or abuse by the employing establishment in handling this matter. Colonel Fleming stated that he approved each of appellant’s request for leave since April 22, 1999 noting that he granted appellant 160 hours of advanced sick leave and 120 hours of advanced annual leave. Because appellant has not submitted evidence of error or abuse by the employing establishment in handling her requests for leave, the Board finds that appellant has not established a compensable factor of employment under the Act.

The filing of an EEO complaint by appellant against Colonel Fleming for harassment and discrimination also involves administrative or personnel matters.¹⁰ The record does not contain a decision from the EEOC finding that appellant was either harassed or discriminated against by the employing establishment. Inasmuch as appellant has failed to establish that the employing establishment committed error or abuse, the Board finds that she has not established a compensable factor of employment under the Act.

Inasmuch as appellant did not establish that her emotional condition was caused by a compensable factor of employment under the Act, there was no need for the Office to address the medical evidence of record at the time of its decision.¹¹

⁸ *Donald E. Ewals*, 45 ECAB 111, 124-25 (1993).

⁹ *Margreate Lublin*, 44 ECAB 945 (1993).

¹⁰ *Janet I. Jones*, 47 ECAB 345, 347 (1996).

¹¹ *Garry M. Carolo*, 47 ECAB 299, 305 (1996).

The July 17, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member