

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. LATHAM and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, CRIMINAL INVESTIGATION DIVISION,
Knoxville, TN

*Docket No. 99-517; Submitted on the Record;
Issued January 31, 2002*

DECISION and ORDER

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

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

On July 21, 1993 appellant, a 59-year-old tax fraud investigative aide, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained an emotional condition on or about March 18, 1993 as a result of her federal employment.¹ She attributed her condition, in part, to her involvement in an internal criminal investigation regarding a coworker's firearm that had been reported missing.² As a part of the investigation, appellant and several other coworkers were interviewed. Appellant also responded to written questionnaires regarding the missing firearm and underwent two polygraph examinations. While she expressed concern about the possibility of criminal prosecution and the loss of her job, ultimately, she was not charged with any wrongdoing with respect to the missing firearm. Appellant further alleged that as a consequence of the investigation, she was ostracized by her coworkers and subjected to closes crutiny. She also explained that subsequent to the investigation she began receiving work assignments that included deadlines. Appellant stated that other employees did not receive similar assignment deadlines. Additionally, appellant stated that she was wrongly accused of improper use of office photocopying materials.

The Office of Workers' Compensation Programs issued a November 17, 1993 decision denying appellant's claim. The Office found that appellant failed to establish any compensable employment factors and that her feeling of being ostracized by coworkers was self-generated.

¹ Appellant also claimed that her preexisting hypertensive condition was aggravated by her employment.

² The firearm was allegedly stolen from the assigned Special Agent's locked gun cabinet in early February 1993. It was reportedly found on February 5, 1993 in the bushes adjacent to a restaurant in Newport, TN; approximately 50 miles from its last know location.

By decision dated August 5, 1998, an Office hearing representative affirmed the Office's November 17, 1993 decision denying appellant's claim.

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

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.³ Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁵ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁶

A number of the employment incidents appellant identified as contributing to her emotional condition involve administrative and personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁷ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁸

Appellant initially identified the employing establishment's investigation of the missing firearm as a contributing factor to her claimed emotional condition. An employer has the right to conduct investigations if wrongdoing is suspected.⁹ The Board has held that investigations that

³ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Id.*

⁸ *Id.*

⁹ *Bernard Snowden*, 49 ECAB 144, 149 (1997).

do not involve an employee's regularly or specially assigned duties are not considered to be employment factors. Such investigations are an administrative function of the employing establishment.¹⁰ The record indicates that appellant filed both a federal civil complaint and an Equal Employment Opportunity (EEO) claim regarding the investigation. However, there is no indication that the EEO complaint was resolved in appellant's favor. While appellant settled her federal civil complaint, the terms of settlement are confidential. Thus, while appellant alleged that the investigation was conducted in an abusive manner and in violation of her civil rights, she has not demonstrated that the employing establishment either erred or acted abusively in discharging its administrative duties.

Appellant also expressed concern over the possibility of losing her job. An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.¹¹ Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.¹²

Following the initial phase of the investigation, appellant noted that her work assignments began to include deadlines. She explained that no other employee received similar deadlines. In response to appellant's allegation of disparate treatment, the employing establishment explained that the assignment deadlines were instituted as means of fairly allocating appellant's time among several agents who required her assistance. Appellant did not allege that she had difficulty in meeting her assignment deadlines. In fact, she stated she had "never failed or refused to carry out or complete an assignment timely." Thus, her only objection to the assignment deadlines was that to her knowledge, completion dates had never been given to any other employee. The assignment of work is an administrative function and the manner in which a supervisor exercises his or her discretion falls outside the ambit of the Act. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable.¹³ Even if appellant was the only employee to receive assignment completion dates, she has failed to demonstrate that the employing establishment either erred or acted abusively in this particular administrative matter.

Appellant also alleged that on March 19, 1993 she was wrongly accused of using the office copier for personal matters. She stated that she had left an envelope on her desk containing personal material she had compiled for her attorney. Appellant further indicated that she was asked whether she had been copying office documents to take to her attorney. The employing establishment stated that appellant had reportedly used the copier extensively that day despite the fact that she had not been given an assignment that would have required such extensive use. Appellant was advised of the employing establishment's policy with respect to personal use of the copier. She reportedly expressed her understanding of the policy and explained that she had not used the copier for personal reasons. According to the employing establishment, no further action was taken and the matter was closed.

¹⁰ *Patricia A. English*, 49 ECAB 532, 537 (1998); *Sammy N. Cash*, 46 ECAB 419 (1995).

¹¹ See *Lillian Cutler*, *supra* note 5.

¹² *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹³ *Frank B. Gwozdz*, 50 ECAB 434, 438 (1999).

The monitoring of activities at work is an administrative function of the employer.¹⁴ Furthermore, the employing establishment's decision to counsel appellant about the agency's policy with regard to personal use of the copier is administrative in nature.¹⁵ The question is not whether appellant used the copier for personal reasons, but whether the employing establishment erred or acted abusively in discharging its administrative duties. The employing establishment was clearly within its rights to inquire about appellant's use of the copier on March 19, 1993. Merely advising appellant of the employing establishment policy regarding personal use of office equipment does not amount to error or abuse on the part of the employing establishment.

Appellant has not demonstrated that the employing establishment either erred or acted abusively in discharging its duties with respect to any of the above-noted incidents involving personnel or administrative matters.¹⁶

Appellant also alleged that as a result of the investigation her coworkers ostracized her. She also indicated that other coworkers closely scrutinized her activities in and out of the office. Appellant stated that her telephone had been tapped and that the employing establishment had her home under surveillance. The record is devoid of any evidence substantiating appellant's allegations that her home telephone was tapped and that her personal residence was under surveillance. As for her feelings of being ostracized by coworkers, this appears to be self-generated. By analogy, this allegation is most akin to a claim of harassment. The Board has held that for harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.¹⁷ The allegations of harassment must be substantiated by reliable and probative evidence.¹⁸ While appellant may have either experienced or sensed a decrease in the level of discourse between herself and her coworkers, she has not submitted sufficient factual evidence to support her allegations that she was ostracized by coworkers. Appellant has alleged in general terms that she was repeatedly ostracized, but she has not provided a description of specific incidents or sufficient supporting evidence to substantiate this allegation. As such, appellant's allegation constitutes a mere perception, which does not support her claim for an employment-related emotional condition.¹⁹

Inasmuch as appellant failed to substantiate a compensable employment factor as a cause of her claimed emotional condition, the Office properly denied appellant's claim.

At the February 23, 1998 hearing, appellant's counsel moved to amend appellant's July 21, 1993 claim to include additional employment incidents that had not previously been alleged. Several of the alleged employment incidents occurred after appellant filed her claim.

¹⁴ *John Polito*, 50 ECAB 347, 349 (1999).

¹⁵ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

¹⁶ *Ruthie M. Evans*, *supra* note 6.

¹⁷ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹⁸ *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

¹⁹ *See Curtis Hall*, 45 ECAB 316, 325 (1994).

Additionally, appellant alleged that her employment-related stress began as early as 1991. The hearing representative advised appellant that he would limit his review to the issues and employment incidents that were previously considered by the Office in rendering its November 17, 1993 decision.²⁰ On return of the case record, the Office should develop the additional employment factors appellant raised at the February 23, 1998 hearing.²¹

The August 5, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 31, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

²⁰ 5 U.S.C. § 8124 (b)(2); 20 C.F.R. § 10.133.

²¹ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).