

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONIA GARCIA and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEMS, El Paso, TX

*Docket No. 00-2523; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

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

The issue is whether appellant had disability after January 4, 1999 due to an employment-related emotional condition.

In November 1994 appellant, then a 29-year-old education technician, filed an occupational disease claim alleging that she sustained an emotional condition due to her exposure to various incidents and conditions while she worked at the Federal Prison Camp, El Paso, Texas. Appellant indicated that on March 28, 1994 she was approached by an inmate who told her that he loved her; she indicated that she felt threatened by the inmate.¹ The Office of Workers' Compensation Programs accepted that appellant sustained a "major depressive disorder, single episode." The Office determined that appellant had established an employment factor with respect to the incident involving the inmate on March 28, 1994.

Appellant returned to work for the employing establishment as an education technician in October 1995; she began working as a medical record technician in May 1997. Appellant later claimed that she sustained a recurrence of disability on and after January 4, 1999 due to her accepted employment condition. She indicated that her claimed recurrence of disability was mainly triggered by her transfer to the Federal Correctional Institution La Tuna for the period August 23 to 27, 1998.² Appellant indicated that she felt nervous whenever she had to walk past

¹ Appellant also claimed that she developed stress because the employing establishment failed to properly investigate and discipline the inmate involved in the March 28, 1994 incident. She further claimed that a supervisor made inappropriate comments in April 1999; that she was issued improper disciplinary letters between May and October 1994; that several leave requests were mishandled between August and October 1994; and that a change in her work schedule was mishandled in August 1994.

² Appellant later indicated that she was not claiming a recurrence of disability due to her accepted condition, but rather a new employment-related emotional condition, which caused total disability on and after January 4, 1999. Appellant was temporarily assigned to the Federal Correctional Institution La Tuna as a unit secretary. The record reflects that the La Tuna facility is a higher security facility than the El Paso facility.

inmates, particularly if her hands were filled with files.³ She stated that on August 23, 1998 the key to unlock the main door to her work unit became stuck and a group of inmates were standing close by and noticed that she was struggling. Appellant indicated that she panicked when the inmates started to walk towards her and asked her to let them through the door she was attempting to open. She indicated that the inmates were whispering to each other and that she felt they were going to attack her in order to get through the door.⁴

Appellant also implicated other events, which occurred during her detail at the La Tuna facility. She indicated that on August 25, 1998 she became aware that the body alarm of another employee had gone off and noted that she felt some inmates were creating a diversion as a means of attacking her.⁵ Appellant indicated that the inmates regularly exposed her to whistles and catcalls. She stated that she felt threatened when she performed her daily duty of distributing mail and came into contact with inmates. Appellant also claimed that she felt uncomfortable whenever an inmate cleaned her office because she felt that he would attack her with a broom. She further claimed that the employing establishment wrongly asked her for additional medical evidence when she claimed that her medical condition prevented her from being reassigned to temporary duty at the La Tuna facility.⁶ Appellant claimed that in November 1998 she was improperly denied a job in the La Tuna facility for which she qualified. She asserted that, during a meeting in early January 1999, a supervisor unfairly criticized her regarding her use of leave in December and her completion of time and attendance records.

By decision dated March 19, 1999, the Office denied appellant's claim on the grounds that she did not meet her burden of proof to establish that she sustained a recurrence of disability due to the accepted employment injury.⁷ By decision dated and finalized March 9, 2000, an Office hearing representative affirmed the Office's March 19, 1999 decision. The Office hearing representative modified the Office's prior decision to reflect that appellant's claim was essentially a claim for a new employment-related emotional condition, which caused disability on and after January 4, 1999. She determined that appellant had not established the occurrence of such a new employment-related emotional condition.⁸

³ Appellant indicated that inmates would often come into her office and that a security guard was present in her work unit but not in the immediate area of her office.

⁴ Appellant indicated that she ordered one of the inmates to retrieve an officer and that the officer came in about two minutes.

⁵ Appellant stated that body alarms were activated by employees when they were in an emergency situation. She indicated that she was told by a supervisor to stay where she was during the incident.

⁶ She also asserted that the employing establishment used an outdated form when it made the document request.

⁷ The Office indicated that appellant should file a claim for a new injury.

⁸ With respect to the incident in which appellant described opening a locked door at the La Tuna facility, the Office hearing representative determined that appellant had established an employment factor with respect to the actual opening of the locked door, but not with respect to her claim that she was exposed to risk during the incident. The Office hearing representative found that appellant had not submitted sufficient medical evidence to establish that she sustained a condition due to this accepted employment factor. She further noted that appellant had not established that she sustained a recurrence of disability on or after January 4, 1999 due to the prior accepted employment injury.

The Board finds that the case is not in posture for a decision regarding whether appellant had disability after January 4, 1999 due to an employment-related emotional condition.

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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his 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.⁹ 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.¹⁰

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.¹¹ 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.¹²

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.¹³ 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.¹⁴

The Board notes that the Office hearing representative properly determined that the present case essentially involves a claim for a new employment-related emotional condition, which caused disability on and after January 4, 1999. The Board must, thus, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹² *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹³ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁴ *Id.*

Appellant alleged stress on several occasions when, during the course of her work, she encountered situations in which she felt that she was in danger from inmates at the La Tuna facility. Appellant described an incident on August 23, 1998 when inmates gathered around her while she struggled to open a door; she also described an incident on August 25, 1998 when she became aware that a body alarm of a coworker had been triggered, hence indicating the occurrence of an emergency. Appellant also detailed other occasions that she experienced stress, such as being close to inmates when she delivered mail; being in her office with an inmate who handled a broom; and being exposed to whistles and catcalls. The record contains statements of the employing establishment officials and coworkers, which essentially confirm the factual aspects of appellant's claims in this regard.

The Board finds that the above-described incidents are sufficiently related to appellant's employment to constitute employment factors. Appellant experienced these incidents while performing her regularly assigned duties and the nature of her work required her to be in the proximity of potentially dangerous inmates.¹⁵ The fact that the potential harm faced by appellant did not actually materialize is not fatal to a finding that the incidents she described constitute employment factors.¹⁶ Under the facts of the present case, particularly the job requirement that appellant be in close contact with inmates while performing her duties, it cannot be said that appellant's reaction to these incidents were self-generated or beyond the scope of the requirements of her job.

Regarding appellant's allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave and mishandled medical document requests, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁷ Although the handling and management of disciplinary actions leave usage and document requests are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁸ 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 determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁹ Appellant did not submit evidence showing that the employing establishment committed error or abuse regarding these matters. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

¹⁵ *Lillian Cutler*, *supra* note 10.

¹⁶ For example, in *John T. Russell, II*, 46 ECAB 536, 543 (1995), the Board noted that the Office properly found an employment factor when the employee, a special agent for the Department of the Treasury, "feared for his safety due to the fact that he obtained information during an investigation regarding an employing establishment official suspected of drug-related activities."

¹⁷ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁸ *Id.*

¹⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Regarding the denial of appellant's request for a different job in December 1998, the Board has previously 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 assigned work duties, but rather constitute the employee's desire to work in a different position.²⁰ Moreover, appellant did not establish that the employing establishment committed error or abuse with respect to the administrative function of handling her request. Thus, appellant has not established a compensable employment factor under the Act in this respect.

In the present case, appellant has established compensable factors of employment with respect to the above-described incidents when she performed her work duties and had contact, with inmates at the La Tuna facility. As appellant has established compensable employment factors, the Office must base its decision on an analysis of the medical evidence. As the Office found there were no compensable employment factors, it did not analyze or develop the medical evidence with respect to these accepted factors.²¹ The case will be remanded to the Office for this purpose.²² After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

²⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

²¹ The record contains numerous medical reports from 1999, including a number of reports of Dr. Arthur L. Ramirez, an attending Board-certified psychiatrist.

²² *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

The decision of the Office of Workers' Compensation Programs dated and finalized March 9, 2000 is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, DC
March 5, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member