

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EUGENIA ROSE BECK and DEPARTMENT OF JUSTICE,  
U.S. CUSTOMS SERVICE, Jamaica, NY

*Docket No. 01-1346; Submitted on the Record;  
Issued May 8, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On April 6, 2000 appellant, then a 44-year-old commodity team aide, filed an occupational disease claim alleging that her emotional condition resulted from employment factors. In response to an Office of Workers' Compensation Programs' inquiry, appellant detailed several factors. She had worked for three different supervisors, the last of whom was uncommunicative and with whom she did not get along. Appellant was forced to watch a training tape on integrity, which involved child pornography and illegal search and seizure.<sup>1</sup> Management failed to inform her about advance sick leave when she became addicted to narcotic drugs prescribed for her emotional condition and insomnia and had to undergo detoxification. A coworker took a prescription drug in front of her, which made her want to grab the bottle and take all his pills.

Appellant attributed her depression and anxiety to "so much error on management's part." She stated that by the time she stopped work in March 2000 she was totally depressed and felt as if she had been "in a mental torture chamber." Appellant submitted a note from Dr. Thornton Vandersall, a Board-certified psychiatrist, who noted that he had stopped treating appellant in June 1995, a month before she began working for the employing establishment and that further treatment was not needed at that time. A June 16, 2000 report from Dr. Delores Cuscuna, a licensed clinical psychologist, diagnosed avoidant personality disorder as well as mixed anxiety and depression, which was causally related to occupational stress at work.

By decision dated September 27, 2000, the Office denied appellant's claim on the grounds that she had failed to establish any compensable factors of employment. The Office

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<sup>1</sup> Appellant stated that the tape upset her because, first, she is a child abuse victim and, second, her integrity was very high and she did not need to be trained.

found that having three different supervisors and being forced to watch a training tape were noncompensable factors because these were administrative actions and no managerial error or abuse had been shown. The Office also found that compensable work factors -- alleged coworker and supervisory harassment, appellant's learning disability, an Equal Employment Opportunity (EEO) complaint that was not filed and detoxification -- were not verified.

Appellant requested reconsideration by letter dated October 20, 2000 and submitted additional factual information and a June 16, 2000 medical report from Dr. Cuscuna.

On January 29, 2001 the Office denied appellant's request on the grounds that the evidence submitted was repetitious in nature and, therefore, insufficient to warrant review of its prior decision. The Office noted that the voluminous handwritten documents appellant submitted were merely a restatement of evidence previously submitted.

The Board finds that appellant has failed to establish that her emotional condition was sustained while in the performance of duty.<sup>2</sup>

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish 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.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>4</sup> 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.<sup>5</sup> These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.<sup>6</sup>

Disability that results from an employee's frustration over not working in a particular environment, holding a particular position or securing a promotion is not covered. On the other

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<sup>2</sup> The Office's January 29, 2001 decision denying reconsideration was based on a conclusion that the evidence submitted and arguments presented were repetitious and therefore insufficient to warrant merit review. The Board finds, however, that due to the nature of the arguments and evidence, the Office actually conducted a merit review of the arguments and evidence submitted in support of reconsideration. Therefore, the Board has jurisdiction of the merits in this case.

<sup>3</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>4</sup> *Samuel Senkow*, 50 ECAB 370, 373 (1999).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

hand, disability due to an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by management or the work itself is covered under the Act.<sup>7</sup>

In emotional condition cases, the Office 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.<sup>8</sup> Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>9</sup>

In this case, the Office initially found that appellant had failed to submit evidence supporting her allegations of work factors that contributed to her depression and anxiety. On reconsideration appellant submitted several handwritten documents. One dated April 23, 1998 contained 78 numbered paragraphs, which: (1) alleged overwork in trying to "play catch-up" following a week's leave; (2) described a discussion with coworkers, some of whom "encouraged" her to seek work elsewhere because she found so much wrong with the employing establishment; (3) charged that coworkers and supervisors ridiculed her for tape recording presentations and conversations with trainers; and (4) stated that she was always being corrected and belittled for her speech and job performance because of her learning disability, which was "common knowledge" at work.

Appellant also complained about her performance appraisal, her promotion from automation clerk to team aide and supervisory harassment because she was a witness in a lawsuit against the employing establishment. She stated that she had to go on anti-anxiety medication because of the "hostile work environment" and that her supervisor insulted her intelligence, "a continual thing around here." Appellant alleged that she was made to feel "left out" at a meeting during which newly hired coworkers related the colleges from which they had graduated because she had completed only a few college courses.

After reviewing appellant's documents, the Office found the "same problem [that] necessitated the initial denial" of appellant's claim, namely that none of appellant's statements relating to her federal employment was substantiated by any other factual evidence, such as the findings of EEO complaints or grievances of the accounts of witnesses. Appellant described a series of incidents and discussions with coworkers and supervisors at work, but failed to specify any dates or provide any corroborating evidence from those involved.

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<sup>7</sup> *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *Margaret Kryzcki*, 43 ECAB 496, 502 (1992);

<sup>9</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

A claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that she believes caused or adversely affected her condition.<sup>10</sup> Personal perceptions and feelings alone are not compensable under the Act.<sup>11</sup>

Inasmuch as appellant provided no detailed explanation of any of her allegations and failed to submit any corroborating evidence, the Board finds that she has failed to establish any compensable factors of employment.<sup>12</sup>

Appellant also generally alleged harassment by her coworkers and supervisors regarding her learning disability. For harassment to constitute a compensable work factor under the Act there must be evidence that harassment or discrimination did in fact occur.<sup>13</sup> In this case, appellant has offered no evidence that she was harassed at work. In her statements, she alluded to being criticized and belittled, but provided no details of when and how any specific incidents occurred. Therefore, the Board finds that appellant has failed to establish that any harassment actually took place.<sup>14</sup>

Finally, appellant related feelings of inability to compete with others for “career ladder” positions and of being left out and insulted. She stated that a hostile work environment forced her to go on medication for anxiety and attributed her emotional condition to “so much error” on the part of management.

The Board has held that reactions to actions taken in an administrative capacity are not compensable unless the employing establishment erred or acted abusively in its administrative capacity.<sup>15</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>16</sup> Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.<sup>17</sup>

While appellant has generally alleged that her work environment was hostile and that management acted abusively, there is no evidence in the record supporting these allegations. She has failed to provide any specific details of managerial actions relating to administrative or

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<sup>10</sup> *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

<sup>11</sup> *Earl D. Smith*, 48 ECAB 615, 650 (1997).

<sup>12</sup> See *Dinna M. Ramirez*, 48 ECAB 308, 314 (1997) (finding that appellant failed to meet her burden of proof to establish a compensable factor of employment).

<sup>13</sup> *Ronald C. Hand*, 49 ECAB 113, 116 (1997).

<sup>14</sup> See *Christophe Jolicoeur*, 49 ECAB 553, 556 (1998) (finding that appellant failed to establish that his supervisor was verbally abusive).

<sup>15</sup> *William H. Fortner*, 49 ECAB 324, 325 (1998).

<sup>16</sup> *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>17</sup> *Anna C. Leanza*, 48 ECAB 115, 121 (1996).

personnel matters that could be shown to be error or abuse. Therefore, she has failed to establish a compensable factor.<sup>18</sup>

The January 29, 2001 and September 27, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>19</sup>

Dated, Washington, DC  
May 8, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>18</sup> See *William Karl Hansen*, 49 ECAB 140, 144 (1997) (finding that appellant's frustration with the policies and procedures of management do not constitute compensable work factors absent a showing of error or abuse).

<sup>19</sup> Because appellant failed to establish any compensable employment factors, the Board need not consider the medical evidence of record. *John Polito*, 50 ECAB 347, 350 n. 18 (1999).