

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA I. WRIGHT and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Des Plaines, IL

*Docket No. 01-1420; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On July 1, 1999 appellant, then a 42-year-old air traffic controller, filed a claim alleging that on April 2, 1999 she first became aware that she had developed anxiety, depression and pseudoseizures and on June 17, 1999 she realized that it was related to her federal employment. She stopped work on April 4, 1999.

In a statement, appellant alleged, as follows:

“I have never suffered from anxiety, depression or pseudoseizures prior to having discriminatory and retaliatory treatment directed towards me by managers and supervisors at DTW ATCT [Detroit Metro Air Traffic Control Tower]. I began to feel discriminated and retaliated against immediately after I transferred, when I observed my coworkers intentionally avoiding me each day. My being discriminated and retaliated against was further confirmed when my managers and supervisors failed to provide me with the same opportunities as they provided for my white coworkers. My trainer repeatedly requested training for me that is routinely provided for my white coworkers; nevertheless, managers and supervisors at DTW ATCT again failed to make routine training available to me. As a result of being discriminated and retaliated against, I have severe headaches accompanied by anxiety, depression and pseudoseizures.”

The employing establishment attached an undated comment to appellant's claim form from the operations supervisor, Robert F. Tessmer, which stated that he was not aware of any discriminatory or retaliatory treatment directed at appellant during her training under his supervision. Mr. Tessmer stated that he was not aware of any coworkers intentionally avoiding appellant, or of any instances where she was not provided the same opportunities as her coworkers under his supervision, nor was he aware of any training opportunities that were

routinely provided other coworkers which were denied to appellant. Mr. Tessmer stated that appellant had been progressing satisfactorily in her training at Detroit Metro Tower and performing in a competent manner and, had she continued in her training program, he would have expected her to have completed the training program successfully. He noted that appellant's training had stopped due to her absences from work. At no time did she express to him the allegations mentioned in her statement or express having any problems relating to discrimination or retaliation during her training.

On April 15, 1999 Dr. Paul L. Brattain, the regional flight surgeon, advised appellant that her medical clearance for air traffic control specialist duties was temporarily withdrawn.¹

By letters dated July 27, 1999, the Office of Workers' Compensation Programs requested further information from both appellant and the employing establishment, including a statement of employment factors implicated in causing appellant's alleged condition.

In response, in an undated statement, appellant alleged that management promoted and supported a hostile work environment by allowing coworkers to assume that her return to duty at DTW was because her trainer called her a "n_____." She alleged that on numerous occasions management stated to her that her training situation was "unusual." Appellant further alleged that her trainer filed an Equal Employment Opportunity (EEO) complaint which made her concerned and worried about how the grievance would impact her training. She alleged that she expressed her concern to management to no avail, that she was paranoid and could not perform her duties to full potential and she was forced to take a leave of absence. Appellant claimed that the trainer's grievance "appeared to be racial issues" and that she was at the center of the conflict, since the conflicting issues pertained to her training and therefore she knew that the hostility directed towards her would increase. Appellant claimed that she felt she was set up to fail at her training and that no one wanted to train her. She further alleged that her primary trainer was very aggressive and an overtly stern trainer. Appellant claimed that her trainer made several requests for routine enhancement training on appellant's behalf which were either denied or ignored. She alleged that she was not allowed ample time to work in a given position or to become proficient in the tasks required of that position. Appellant claimed that she was put on the Ground Control East (GCE) position during the heaviest workload volume and then was criticized for errors, which she claimed her white coworkers were not, that when she was on Ground Control West (GCW), another controller was being reprimanded by management and blamed appellant for her failures, and that she was not allowed to become proficient with various

¹ Decertification was noted to be due to appellant's emotional condition and her use of disqualifying medications. On April 12, 1999 Dr. David L. Gaston, a Board-certified neurologist found that appellant was not disabled for work. On April 13 and May 28, 1999 electroencephalograms (EEG) were reported to be normal without definite epileptiform or lateralizing seizures. An April 17, 1999 computerized tomography (CT) scan was reported to be without significant abnormality. A long term EEG beginning April 30, 1999 was reported to be normal. On June 17, 1999 Dr. Rosalind E. Griffin, a Board-certified psychiatrist, opined that appellant could return to work without restrictions on June 21, 1999. On August 9, 1999 Dr. Thomas Park, a Board-certified psychiatrist of professorial rank, opined that appellant had a panic disorder, he placed her on Prozac and Xanax, and he opined that hopefully she would be able to return to work on September 1, 1999. Also on August 9, 1999 Dr. Ahmad Kafi, a Board-certified psychiatrist, diagnosed anxiety attacks associated with mood of depression with psychotic features, a paranoid personality and tension headaches, started her on BuSpar and opined that appellant should recover within a month or two.

positions and was then docked for not working efficiently, when other controllers working the same position were not docked.

Appellant alleged that she was not made part of the team, that some days she seemed to be accepted and some days she was not, that Reed Skinner did not speak to her unless she spoke first, that Mr. Tessmer, Mark Williams and Paul Satterwhite were aware of the hostile work environment, that training was not available to her of Thursdays and that on Thursday mornings she often called in sick because she would become depressed and physically ill. She further alleged that there were times when Angela Thompson's team rejected her and gave her the cold treatment, that when she debriefed with Dave Arnowski he insulted her by comparing himself with her and claiming that he never needed any extensions and that he attempted to discourage her and make her feel incompetent. Appellant claimed that she became paranoid of Dan Ricks and unsure of his intentions when she overheard him say that people who do not belong should be eliminated and that it was not fair to him to train people who would one day bump him back down the seniority list for days off and prime vacation time.

Appellant alleged that she was asked many times about her seniority and that it was becoming obvious that she was a problem because when she completed training, several people's schedules would be affected. She claimed that she was sure Dan Ricks was planning to eliminate her. Appellant claimed that her trainer's EEO complaint made her realize the reason for hostile treatment from coworkers and management was that she had made allegations other employees referred to her using racial epithets. She alleged a racially hostile environment that was promoted and condoned by various levels of management and that she was denied the same opportunities and the same quality training as white trainees.

Appellant also provided a November 20, 1997 settlement agreement regarding an EEO claim. No finding of error or discrimination was made and appellant was given a lump-sum payment of \$2,500.00, promoted and reassigned to another ATC facility.

In a September 23, 1999 response, the employing establishment noted that following settlement of the 1995 EEO complaint, appellant returned to duty. At the time she began her extended absence in early April 1999 she had been progressing satisfactorily towards certification on two positions. Appellant never informed management at the facility that someone in her previous training program made a racial epithet. She did in fact receive skill enhancement training while training on local control. The employing establishment noted that appellant's training was tailored for her individual needs as was customary, based upon her prior experience, that training on multiple positions and training several times daily was not unusual. Training differences occurred based upon many factors, including staffing and number of individuals competing for training time on the same positions. The employing establishment noted that appellant's behavior and demeanor from her return to work until her absence did not indicate any signs of stress or emotional distress, and that she was on tract for certification.

By decision dated October 26, 1999, the Office rejected appellant's claim finding that the evidence of record failed to establish that appellant sustained an emotional injury in the performance of duty. The Office found that appellant had failed to establish any compensable factors of employment in the development of her emotional condition and that the alleged factors of employment were either not compensable or not established as occurring as alleged. The

Office explained that training and the activities surrounding and involved with training were not compensable because they were an administrative function and did not arise out of and in the course of appellant's regular or specially assigned duties.

In a letter to the Office dated June 10, 2000, appellant, through her representative, requested reconsideration of the October 26, 1999 decision. Appellant contended that an air traffic controller's duties and responsibilities were extremely stressful in nature and that the stressful work environment was exacerbated by the treatment appellant received from her supervisors.

In an attached affidavit, appellant listed her job duties and claimed that air traffic controller decisions could have life or death consequences, particularly those relating to aircraft spacing and were exacerbated by limited staffing, limited ground space, the volume of traffic, the complexity of traffic and constant equipment breakdowns and outages which resulted in ground delays and stops which complicated an air traffic controller's job. She further stated that she had to learn to master new equipment and programs within a matter of a few hours. Appellant alleged that air traffic control was a team operation and that lack of cooperation between controllers and problems she encountered with supervisory personnel added stress.

In a July 19, 2000 letter to the Office, the employing establishment noted that appellant's allegations with regard to her civil rights complaints were addressed in response to her EEO grievance and that no violation was found. It noted that appellant had returned to duty on September 2, 1999 following her extended absence. She was performing administrative duties only, as her medical certificate for air traffic duties had been withdrawn.

By decision dated September 1, 2000, the Office denied modification of the October 26, 1999 decision.

By letter dated October 25, 2000, appellant requested reconsideration of the September 1, 2000 decision arguing that skill enhancement training was not provided as stated in the Office's memorandum to the Director, that the employing establishment documents regarding her training were bogus and fraudulent, that she was not provided the training white coworkers received and that her requests for various training modalities was not immediately provided.² A copy of the August 27, 1999 EEO grievance settlement response was submitted which noted that appellant would be promoted and transferred, and which found that her training had "been conducted in accordance with agency directives."

By decision dated January 31, 2001, the Office denied modification of the September 1, 2000 decision.

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

² An October 20, 2000 report from Dr. Kafi stated that appellant was being treated for "emotional and psychological infirmities as a direct result of her employment," and that the "failure of this agency to provide training to [appellant] contributed to her emotional problems."

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

To establish appellant's claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and substantiating employment factors or incidents alleged to have caused or contributed to her emotional condition; (2) rationalized 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.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Workers' compensation law is not applicable 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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion, transfer or training. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁶ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁷ In these cases, the feelings are

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *See Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 4.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

considered to be self-generated by the employee as they arise in situations not related to his or her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁸

Many of appellant's allegations concerning the employment factors that caused her emotional condition involve her training and training-related issues, desire and opportunities for advancement or promotion. The Board has frequently explained that matters involving the training of an employee are administrative functions and do not arise out of and in the course of the employee's regular or specially assigned duties.⁹ In *Thomas D. McEuen*¹⁰ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹¹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In this case, appellant has presented no evidence of administrative supervisory error or abuse regarding her training or training assignments. Therefore, they are not compensable under the Act.

Appellant also alleged that she was discriminated and retaliated against, and was harassed, primarily based on allegations of racial discrimination and name calling. It is well established that for harassment, discrimination or retaliation to give rise to a compensable disability under the Act there must be some evidence that the implicated incidents of harassment, discrimination or retaliation did, in fact, occur. Mere perceptions of harassment, discrimination or retaliation are not compensable.¹² An employee's allegations that he or she was harassed or discriminated or retaliated against are not determinative of whether or not harassment or discrimination occurred. 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.¹³ Such incidents and allegations may rise to the level of compensable harassment if they established to have occurred. The Board finds, however, that appellant has failed to submit sufficient evidence to establish her allegations that supervisors or coemployees used racial epithets towards her or that she was otherwise harassed or discriminated against in the opportunities for training at the employing establishment.

⁸ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995); *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹⁰ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹² *Helen Casillas*, 46 ECAB 419 (1995); *Ruth C. Borden*, 43 ECAB 146 (1991).

¹³ *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

Appellant further alleged that she was avoided by her coworkers, that management promoted and supported a hostile work environment by allowing coworkers to make certain assumptions, that she was worried about how her trainer's EEO complaint would affect her, and that she was not made part of the "team," being accepted some days but not others.

These allegations do not pertain to appellant's regular or specially assigned duties. Rather, appellant's allegations deal primarily with her perceptions to coworkers and supervisors. Although she claimed that there was a hostile work environment, insufficient evidence was submitted to establish her allegations as factual.

As appellant has failed to establish any compensable factors of her federal employment, the medical evidence need not be considered.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 3, 2001 and September 1, 2000 are hereby affirmed.

Dated, Washington, DC
May 6, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member