U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE B. BRIGNAC and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Sepulveda, CA

Docket No. 01-1841; Submitted on the Record;
Issued May 7, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 14, 2000 appellant, then a 42-year-old program support assistant, filed an occupational disease claim alleging that on May 2, 2000 she first realized that her anxiety attacks and physical and mental harm were caused by job-related stress due to management issues. She stopped work on August 14, 2000.

By decision dated December 13, 2000, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an emotional condition 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]

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

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 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]

In an undated narrative statement, appellant attributed her emotional condition to several incidents that occurred at the employing establishment. Appellant alleged that she was singled out in September 1997 by her supervisor, Phyllis Hamski.[4] Appellant stated that Ms. Hamski asked her to clock in at the beginning of the workday by sending her an e-mail message through "DHCP." Appellant further stated that Ms. Hamski took away her responsibilities and gave them to another employee. She noted that she was left with covering the surgical clinics, which belonged to another service. Appellant also stated that she was asked to take on two positions to support her full-time status, only to see that management brought in another person at a higher grade to perform her previous job duties. She stated that this was confirmed on April 28, 2000 when she opened an interoffice envelope containing the employee's performance appraisal.

Appellant alleged that, after she had a conversation with her new supervisor, Terrye J. Probyn, regarding these issues, she felt fatigued and asked to go home early. She noted that she returned to work on May 2, 2000 and received medical treatment from the employee's health unit. Appellant further noted that she left work early on May 3, 2000 because she felt dysfunctional and that she sought medical treatment from her private physician who excused her from work until May 8, 2000. She stated that when she returned to work, Ms. Probyn, in an upset manner, called her into the office and told her that she left her work area in a mess on April 28, 2000 and work undone, and accused her of opening another employee's mail. Appellant further stated that Ms. Probyn told her that she looked stressed out and that, if she were unable to perform her work duties, then she could be disciplined in writing or fired by her.

Appellant filed a complaint against the employing establishment with the Equal Employment Opportunity Commission (EEOC) on May 1, 2000.

Appellant contended that, while Ms. Hamski was her supervisor, she did not speak to her in the mornings when she passed her desk. She stated that Ms. Hamski would pass by her and talk to her coworkers, Carol Showalter and Jo Kane. Appellant also stated that, after three days she initiated a conversation with Ms. Hamski and noted her response. Appellant also noted that, in the second week after Ms. Hamski became her supervisor, Ms. Hamski put her head facing

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

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

[4] In her undated narrative statement, appellant indicated that Ms. Hamski left the employing establishment in December 1999, but that she was replaced by one of her friends and that her problems continued.

downward when they passed each other in the hallway. Appellant explained to her chief, Dr. Reber that Ms. Hamski did not verbally communicate with her, that she had not properly introduced herself and that she relayed messages to her through her coworkers. Appellant indicated that Dr. Reber was going to speak to Ms. Hamski, but that he retired from the employing establishment two to three months later and she never saw him again. Appellant further indicated that Lupe, a housekeeping supervisor, asked her why she was crying and that she told Lupe that she was feeling negative vibes from her supervisor who did not speak to her or communicate with her.

Around July 1997 appellant received permission from Ms. Hamski to work a compressed schedule for family reasons. Appellant stated that on the first day of her new work schedule, Ms. Kane informed her that Ms. Hamski wanted her to clock in by using the "DHCP" computer. Appellant also stated that Ms. Kane and Ms. Showalter told her that Ms. Hamski did not require them to clock in. Appellant noted that, in response to her e-mail messages about clocking in, several employing establishment managers told her to stop doing so.

Around October 1997, appellant contended that Ms. Hamski approached her to discuss the problem she had with Ms. Kane and Ms. Showalter. She responded that the only problem she had was with Ms. Kane relaying Ms. Hamski's messages to her and that Ms. Hamski did not communicate with her. Appellant noted that Ms. Hamski made minimal attempts to correct her behavior.

Appellant alleged that, around September 2, 1998, she talked to Ms. Hamski about what happened to her work responsibilities.

The sign in policy, the reassignment of an employee to a different position,[5] disciplinary matters such as the issuance of a warning[6] and the filing of an EEOC complaint[7] constitute administrative or personnel matters. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the handling of administrative matters, coverage may be afforded.[8]

In a January 16, 2001 response to appellant's allegations, Ms. Probyn stated that she did not have any knowledge that appellant was required to clock in using the "DHCP."

Concerning appellant's allegation that she was removed from her job duties and threatened with disciplinary action, Ms. Probyn denied that on April 28, 2000 an employee was placed into a position two grade levels higher than appellant. Ms. Probyn noted that, in January 2000, she had a discussion with appellant about her position. She explained that appellant told her that Ms. Hamski took away her job duties. Ms. Probyn told appellant that the position was open to everyone and that she was on the panel that selected the employee, Ana Viramontes.

[5] *James W. Griffin*, 45 ECAB 774 (1994).

[6] *See Barbara E. Hamm*, 45 ECAB 843 (1994).

[7] *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

[8] *Id.*

She asked appellant why she was not interviewed for the position and appellant responded that she did not apply because she did know about it. Appellant informed her that other people told her about the position and that she did not apply for the job after receiving information about it because the position was closed. Ms. Probyn noted that on April 28, 2000 appellant showed her Ms. Viramontes' performance appraisal and responded that this was confidential information and told appellant that her obsession with this affected her work performance. Ms. Probyn noted that appellant had poor work habits and appellant refused to perform assignments unless she explained why appellant had to perform them. Specifically, she noted that when appellant called in sick she had to cover appellant's clinic, which was a mess, in that she could not find the necessary forms and the clinic was not set up. Ms. Probyn warned appellant that she would have to do progressive counseling if her work habits did not improve. Appellant stated that she wanted her job back and Ms. Probyn responded that appellant was a GS-5 while Ms. Viramontes was a GS-7. Ms. Probyn also told appellant that she should have filed a grievance two years ago when Ms. Viramontes was selected.

Based on Ms. Probyn's statements, there is no evidence of record establishing that the employing establishment erred or acted abusively in requiring appellant to clock in, reassigning appellant, selecting Ms. Viramontes and in warning appellant about its disciplinary procedures. The Board finds that, since there is no evidence of record establishing that the employing establishment erred or acted abusively in handling the above matters, appellant has failed to establish a compensable employment factor under the Act.

Regarding appellant's allegation that Ms. Hamski did not verbally communicate with her, the Board has held that actions of an employee's supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.[9] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[10] An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[11] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[12]

In her January 16, 2001 response letter, Ms. Probyn stated that she had no knowledge of either the lack of communication between appellant and Ms. Hamski or any negative vibes from Ms. Hamski towards appellant. Although appellant stated that she told Lupe about her problems with Ms. Hamski, she did not submit any statement from Lupe detailing the harassment. Thus, the Board finds that appellant has failed to establish that harassment actually occurred.

[9] *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

[10] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

[11] *William P. George*, 43 ECAB 1159 (1992).

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

As appellant has not established any compensable factors of her federal employment that she implicates in causing or contributing to the development of her emotional condition, appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.[13]

The December 13, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 7, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[13] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case.