

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA MARTIN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Ann Arbor, MI

*Docket No. 02-1077; Submitted on the Record;
Issued November 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On January 8, 2000 appellant, then a 48-year-old telephone care coordinator, filed an occupational disease claim alleging that she sustained an adjustment disorder with mixed depression and anxiety due to factors of her federal employment. She stopped work on January 6, 2000.

By decision dated June 13, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish that she sustained an emotional condition in the performance of duty.

In a letter dated October 4, 2001, appellant requested reconsideration of her claim. By decision dated January 9, 2002, the Office denied modification of its June 13, 2001 decision.

The Board finds that appellant has not established 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 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 her 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.¹ On the other hand, the disability is not covered where it results from such factors as an

¹ 5 U.S.C. §§ 8101-8193.

employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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 employment factors.³ 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.⁴

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.⁵ 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.⁶

Appellant primarily attributed her emotional condition to a coworker, Carrie Warf, accusing her of assault on October 25, 2001. On her claim form appellant related:

“The incident causing stress and depression occurred on my job initiated by a coworker and management. [S]tress and distress related to allegations of violence by coworker and management [and] supported by [the employing establishment's] police with no proof and the eyewitness' account was not accepted by the aforementioned persons. I was accused and sentenced and threatened with termination and no one as of yet has asked me what happened. Hostile environment created by malicious gossip and defamation of character initiated by the accuser. The accuser has been allowed to gossip and spread rumors with no fear of reprimand, yet an eyewitness' statement was turned down because we work across from each other and we 'talk.' This is what I was told by the secondary supervisor. This whole issue makes me physically ill and mentally stressed and has spilled over into my home life because I [am] so upset about the unfair and prejudiced treatment that I have received. I have to stay in the 'hole'

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

that I was moved to so that the accuser would feel safe and the administrative office would have the total white look that they wanted.”

Regarding the alleged assault on October 25, 2001, Ms. Warf provided a statement that appellant intentionally hit her in the back with a cart twice on that date. She further stated that since October 25, 2001 appellant acted hostile toward her. In response, appellant related that Ms. Warf was angry with her over a private business arrangement. She stated that she was passing Ms. Warf and Julie Ann Orłowski with her cart “and was successful in getting through except for a slight brushing of clothing. Had she been courteous enough to step aside, we should not have even had that much contact.” In a witness statement dated October 26, 2000, Ms. Orłowski related that she did not see appellant bump into Ms. Warf with the cart but that she may have “brushed her because she could not fit through the entrance between the counters....”

In an internal employing establishment memorandum, Denise Ramsey, a supervisor, related that the Violence in the Workplace Committee “met and determined that there was insufficient information to terminate [appellant] based on the allegations”. Ms. Ramsey noted, however, that the committee “discussed that there had been previous complaints from other coworkers in the past about [her] behavior and that she had been transferred from one section (Pharmacy) to Ambulatory Care due to interpersonal conflict with other employees.” Ms. Ramsey stated that the committee determined that officials with the employing establishment should speak with appellant, Ms. Warf, Jody Zayas, coworkers and Ms. Orłowski about behaving in a professional manner. Ms. Ramsey further indicated that, following the alleged assault, Ms. Warf and Ms. Zayas reported that appellant was acting “in a hostile manner toward them.... It was determined that it would be in the best [interest] of everyone to move [appellant] to another location where the three employees would [not] have to interact multiple times daily.”

Appellant maintains that the employing establishment discriminated against her by moving her to a new location due to Ms. Warf’s allegation of assault. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant’s performance of his regular duties, these could constitute employment factors.⁷ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.⁸ In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.⁹ The record contains a report from an Equal Employment Opportunity investigator, regarding appellant’s complaint of discrimination by the employing establishment in moving her workstation after the October 25, 2000 incident between herself and Ms. Warf. However, although the report contains descriptions of interviews it contains no conclusions about whether the employing establishment

⁷ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁹ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

discriminated against appellant and thus it is insufficient to establish a compensable factor of employment. Further, an official with the employing establishment explained that appellant was moved because of her documented past problems with coworkers and hostile behavior after the incident toward Ms. Warf and Ms. Zayas. The employing establishment also counseled all the parties to the incident, not just appellant, on the need to act professionally. Appellant, therefore, has not established that the employing establishment discriminated against her in moving her to a new workstation. Additionally, her reaction to a change in her work location is self-generated as it arises from her frustration over not being permitted to work in a particular location. Thus, it is not compensable under the Act.¹⁰

Appellant further alleged that the employing establishment threatened her with termination. The Board has held that fear of losing one's job or job insecurity is insufficient to constitute a personal injury in the performance of duty.¹¹

Appellant also contended that the employing establishment erroneously denied her request for advance sick leave. However, allegations pertaining to leave denials relate to administrative or personnel matters unrelated to appellant's regular or specially assigned work duties and do not fall within coverage of the Act absent a showing of error or abuse.¹² In this case, appellant has not submitted any evidence that the employing establishment acted erroneously in denying her request for advanced sick leave.

Appellant further attributed her emotional condition to inquiries by coworkers regarding the circumstances of her transfer and to gossip by Ms. Warf. In a statement dated March 15, 2001, appellant's supervisor related:

"Once [appellant] was moved to her current location pending the outcome of the investigation, she began to complain about others approaching her. She stated to me that she was tired of other people asking her about what they heard concerning the accusations. [Appellant] was upset and crying at the time. I responded by telling her to stay focused on herself."

As the Board has held that an employee's reaction to gossip or rumors is a personal frustration that is unrelated to an employee's job duties or requirements, it is not compensable.¹³

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

¹⁰ See *David M. Furey*, 44 ECAB 302, 306 (1992).

¹¹ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

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

¹³ *Gracie A. Richardson*, 42 ECAB 850 (1991).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decisions of the Office of Workers' Compensation Programs dated January 9, 2002 and June 13, 2001 are affirmed.

Dated, Washington, DC
November 12, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member