

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA CASAUS and DEPARTMENT OF THE AIR FORCE,  
KIRKLAND AIR FORCE BASE, NM

*Docket No. 02-1494; Submitted on the Record;  
Issued November 5, 2002*

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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.

On October 29, 1999 appellant, then a 47-year-old computer specialist, filed an occupational disease claim alleging that her major depressive disorder was caused by factors of her federal employment. Appellant stopped work on February 16, 1999.<sup>1</sup>

By decision dated March 29, 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. In a February 15, 2001 letter, appellant, through her attorney, requested reconsideration of the Office's decision.

In a decision dated February 8, 2002, the Office denied appellant's request for modification based on a merit review of the claim.

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

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<sup>1</sup> The record reveals that appellant retired on disability from the employing establishment effective March 25, 2000.

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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

Appellant has alleged that her emotional condition was due to harassment by her supervisors at the employing establishment. She alleged that her supervisor, Mary Garcia, harassed and discriminated against hispanics by requiring them to work overtime at a specific time and date while nonhispanics were given a choice as to when they could work overtime. Appellant stated that, after she talked to Ms. Garcia about this policy, her workload increased, unreasonable deadlines were imposed upon her and Ms. Garcia found fault with her work that was previously acceptable. Appellant also alleged that Ms. Garcia accused her of cheating on her timecard and violating security procedures, which an investigation cleared her of any wrongdoing.

Appellant contended that persistent harassment caused her to request a reassignment from her position as chief of the system/network administration section in the stockpile division. She alleged that when Major Ross Goeres replaced her in this position and she became his employee, he harassed her because he was unhappy with his new assignment. She stated that he called her into his office on several occasions and he reprimanded her for things that she believed were not warranted.

Appellant indicated that she wrote a letter to Colonel Prewitt, Ms. Garcia's supervisor, concerning Ms. Garcia's supervisory tactics. She further indicated that when Colonel Prewitt did not respond to her letter, she met with him to request reassignment from the stockpile division to the computer division. Appellant contended that, after she was informed of her transfer, Ms. Garcia changed the combination to the entrance door of her building and denied her access to her office and computer. Appellant stated that Ms. Garcia instructed coworkers and military personnel not to speak to or be seen with her and that she was escorted by a security officer without any explanation.

Appellant related that after Ms. Garcia retired from the employing establishment she filed a lawsuit against the employing establishment alleging discrimination regarding her suspension

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>4</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

for repeatedly and knowingly accepting unmerited overtime payments. Appellant stated that she was called as a witness for the employing establishment at Ms. Garcia's Merit Systems Protection Board (MSPB) hearing.<sup>5</sup>

Appellant alleged that Major Goeres again harassed her when he was reassigned from the stockpile division to the computer division as her supervisor. She contended that he immediately became hostile towards her and that she could not do anything right according to him. Appellant further contended that Major Goeres assigned lower grade personnel who had no experience to assign and review her work.

Appellant filed a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) against Major Goeres and Lieutenant Colonel John D. Murphy. Appellant alleged that Lieutenant Colonel Murphy openly and wrongly embarrassed her in front of employees during a meeting.

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>6</sup> An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.<sup>7</sup> Verbal altercations, when sufficiently detailed by the claimant and supported by the evidence of record, may constitute factors of employment.<sup>8</sup> This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.<sup>9</sup>

In support of her allegation of harassment, appellant submitted narrative statements from her coworkers. Elaine Ross stated that she was harassed by Ms. Garcia. She also stated that she was unaware of appellant's problems until they went to see Colonel Prewitt to request a transfer. Ms. Ross noted that she had seen tears in appellant's eyes during meetings with Ms. Garcia. She recounted the incident where she and appellant were denied access to the building after their transfer to another division, the subsequent cool treatment they received from their coworkers, the filing of complaints against appellant by Ms. Ross, being required to testify at Ms. Garcia's MSPB hearing and the assignment of lower grade employees to supervisory positions.

Pauline Marquez stated that Ms. Garcia told her not to associate with appellant because she could not be trusted. She stated that Ms. Garcia constantly found fault with appellant's work. She noted the difficulty Commander Paul Bruno, chief of the stockpile division,

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<sup>5</sup> An April 9, 1998 decision of the Merit Systems Protection Board upheld the employing establishment's decision to suspend Ms. Garcia for 30 days without pay.

<sup>6</sup> *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

<sup>7</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>8</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>9</sup> *Compare Abe E. Scott*, 45 ECAB 164 (1993); *Sandra F. Powell*, 45 ECAB 877 (1994); *Raul Campbell*, 45 ECAB 869 (1994).

experienced in dealing with Ms. Garcia's management techniques and treatment of her employees. She further noted her involvement in the changing of Ms. Garcia's timecard. Ms. Marquez stated that appellant was the scapegoat during an investigation of a security violation. She described an incident where a hispanic employee was adversely affected by Ms. Garcia's overtime policy. She stated that appellant's workload was increased and that Ms. Garcia accused appellant of cheating on her timecard after appellant tried to discuss the disparity in the overtime policy with her. Ms. Marquez noted the meeting appellant and Ms. Ross had with Colonel Prewitt and the events that took place when they were transferred to the computer division. She stated that, after the transfer, Ms. Garcia told her and the other employees including, military personnel not to talk to them. Ms. Marquez noted that appellant had to testify at Ms. Garcia's MSPB hearing and the Major Goeres harassed appellant when he became her supervisor again.

Commander Bruno stated that he saw appellant crying because of the treatment she received from Ms. Garcia. He questioned Ms. Garcia's travel arrangements concerning a project she worked on. Commander Bruno stated that appellant was disparaged when something went wrong with a project. He further stated that Ms. Garcia did not allow appellant an opportunity to explain the situation where appellant believed that a security violation had occurred. Commander Bruno recounted the first time he met Ms. Garcia and her inappropriate comments about who the staff worked for. He stated that he was rebuked when he reported Ms. Garcia's behavior to his supervisors.

The statements of Ms. Ross and Commander Bruno indicating that they were harassed by Ms. Garcia and the statement of Ms. Marquez regarding the impact of Ms. Garcia's overtime policy discriminated on a hispanic employee do not specifically relate to the issue whether Ms. Garcia harassed appellant. Further, although Ms. Ross and Commander Bruno saw appellant crying with Ms. Garcia, they did not state that they actually witnessed appellant being harassed by Ms. Garcia during their meetings or encounters. Ms. Ross did not indicate that she was aware of the circumstances under which appellant was crying. In addition, Ms. Ross did not specifically describe the treatment she and appellant received from their coworkers after their transfer to the computer division and Ms. Marquez did not state why Ms. Garcia believed appellant could not be trusted in telling her and other employees not to associate with her. Ms. Marquez did not provide any specific details about the harassment appellant received from Major Goeres.

Regarding the complaints of appellant, Ms. Ross, Ms. Marquez and Commander Bruno about the manner in which Ms. Garcia handled the transfer from the stockpile division to the computer division and the overtime schedule and her finding fault with appellant's job performance and Major Goeres' assignment of lower grade employees to supervisory positions, the Board has held that an employee's complaints concerning the manner in which a supervisor performs his or her duties or exercises his or her supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.<sup>10</sup> This principle recognizes that supervisors or managers in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action

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<sup>10</sup> *Christopher Jolicoeur*, 49 ECAB 553, 557 (1998).

will not be actionable, absent evidence of error or abuse.<sup>11</sup> The record does not contain any evidence of error or abuse by Ms. Garcia and Major Goeres in handling the above matters.

Regarding appellant's contention and Ms. Marquez's statement that her workload increased after she complained to Ms. Garcia about the overtime policy, the Board has held that overwork may be a compensable factor of employment.<sup>12</sup> The evidence in this case is insufficient to establish that appellant was in fact overworked. Captain Todd R. Davenport, appellant's supervisor, stated that there were no staffing shortages that would have affected appellant's workload during the claimed period and there were no extra demands placed upon appellant. He further stated that all assigned tasks and responsibilities were in keeping with appellant's grade and experience. Captain Davenport noted that appellant was able to and did perform her required duties in a satisfactory manner in accordance with expectations.

Appellant's supervisors contended that appellant was not harassed. Lieutenant Colonel Murphy explained why a lower grade employee was designated leader of a web database integration project. He stated that Major Goeres told him that things were not going well with several projects that appellant was working on. Major Goeres told him that whenever he discussed the projects with appellant, she became defensive. Lieutenant Colonel Murphy stated that appellant did not have the necessary expertise to lead the projects while Staff Sergeant Thomas had specific experience in the project area. He further stated that at no time did he see any indications of a personality conflict between appellant and Major Goeres.

Regarding appellant's work environment, Lieutenant Colonel Murphy stated that the employing establishment experienced events such as, downsizing and a merger, which caused employees stress. He further stated that, in appellant's situation, numerous good-faith efforts had been made to accommodate her desire to shift her work hours, to ease her commute and to arrange her office space to minimize her interaction with others. He noted that, through normal rotation, appellant had a new supervisor.

Lieutenant Colonel Murphy related that he was never told not to talk to appellant and he was not aware of any other management officials saying this to any employees.

Captain Davenport reiterated Lieutenant Colonel Murphy's comments concerning appellant's work environment and the efforts made to accommodate appellant.

While the statements from Ms. Ross, Ms. Marquez and Commander Bruno offer some support for appellant's allegation of harassment, they are too vague to constitute the type of corroboration necessary to establish appellant's claim. Thus, they are insufficient to establish appellant's burden.

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<sup>11</sup> See *Alfred Arts*, 45 ECAB 530 (1994).

<sup>12</sup> *Sandra F. Powell*, *supra* note 9.

Appellant's allegations involving the investigation of a security violation<sup>13</sup> and the filing of an EEOC complaint<sup>14</sup> fall within the category of administrative or personnel matters. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.<sup>15</sup> The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.<sup>16</sup>

Although an investigation was conducted regarding appellant's harassment complaint, there is no decision of record indicating that the employing establishment had indeed harassed appellant. Thus, appellant has not established a compensable factor of employment.

Appellant has established a compensable factor of employment with respect to her testimony at Ms. Garcia's MSPB hearing.<sup>17</sup> However, appellant's burden of proof is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>18</sup>

In this case, there is no medical report that specifically relates appellant's emotional condition to the accepted employment factor, her testimony at Ms. Garcia's MSPB hearing. In support of her claim, appellant submitted medical reports from Dr. Edward M. Siegel, a licensed psychologist, Dr. David N. Ewing, a Board-certified psychiatrist, Dr. Carol Bellistri, a Board-certified internist and Dr. Grace Davis, a Board-certified internist, indicating that she was treated for her emotional condition and that she was disabled from work due to job stress. Appellant also submitted laboratory test results and treatment notes. However, this medical evidence failed to specifically address whether appellant's disability was due to being required to testify at Ms. Garcia's MSPB hearing.

As there is no rationalized medical evidence establishing that appellant's emotional condition was causally related to the accepted compensable factor, being required to testify at Ms. Garcia's MSPB hearing, appellant has failed to meet her burden of proof.

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<sup>13</sup> See *Blondell Blassingame*, 48 ECAB 130 (1997); *Sammy N. Cash*, 46 ECB 419 (1995).

<sup>14</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>15</sup> *Anne L. Livermore*, 46 ECAB 425 (1005); *Richard J. Dube*, 42 ECAB 916 (1991).

<sup>16</sup> See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>17</sup> Appellant's required attendance as a witness at the MSPB hearing reflects a specially assigned duty. See *Cutler*, *supra* note 2.

<sup>18</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

The February 8, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC  
November 5, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member