

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN A. CHANDLER and DEPARTMENT OF AGRICULTURE,
SHASTA TRINITY NATIONAL FOREST, Redding, CA

*Docket No. 02-1253; Submitted on the Record;
Issued April 1, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review.

Appellant filed an occupational disease claim on February 1, 2000, alleging that the stress of her job and interactions with her supervisor caused her depression, heart attacks, diabetes and high blood pressure. She explained that, since 1997 her supervisor had "continually denigrated my intelligence" and harassed her for her work as a realty specialist.

Appellant stated that, in one confrontation her supervisor cursed at her after reviewing her work, saying "I [a]m getting damn sick and tired of this," and appellant had to go to an emergency room with heart attack symptoms. She added that she lived in "constant terror" of going to work, never knowing when her supervisor was going to berate her again.

Appellant recounted a June 11, 1999 incident in which she was discussing her work situation with her therapist and had a stress-related heart attack that required five days' hospitalization.¹ She stated that her supervisor took away her maxi-flex schedule, proposed a five-day suspension and issued an unacceptable performance rating.

A coworker stated on June 7, 2000 that appellant had a heart attack at work in October 1999 after a confrontation with her supervisor and had to go to the emergency room. Another coworker stated that appellant had seemed to go deeper and deeper into depression over the past year because her supervisor was continually putting her down and refused to hire another specialist to help with the workload. Two coworkers submitted similar statements.

¹ A June 15, 1999 hospital discharge summary stated that appellant was admitted with chest pain after giving a speech at a hotel about the emotional trauma she suffered after the loss of her son from a heroine overdose in May 1998.

In a statement dated March 27, 2001, appellant's supervisor, Suszanne F. Murphy, related her interactions with appellant from November 1996 through December 1999, when appellant left the employing establishment on social security disability. The supervisor denied using profanity in appellant's presence and discussed the deficiencies in her work.

On April 5, 2001 the Office denied appellant's claim on the grounds that she failed to establish a compensable employment factor. The Office found that appellant's supervisor: (1) reviewed and discussed her work; (2) issued appellant an unacceptable performance review; (3) denied appellant leave without pay to go to cardiac therapy; (4) changed her work schedule; and (5) proposed a five-day suspension. The Office further found that appellant had failed to establish as factual that her supervisor used profanity or expected her to produce 40 hours of work in her reduced schedule week.

On December 11, 2001 appellant requested reconsideration and submitted additional evidence -- three reports from her treating psychiatrist, Dr. Thomas J. Andrews, a Board-certified psychiatrist; three letters from Melinda Adams, a licensed social worker; and an undated letter from Harry Frey.

On February 15, 2002 the Office denied appellant's request on the grounds that the evidence submitted was immaterial and therefore insufficient to require review of its prior decision.

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

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.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment³ 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.⁴ 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.⁵

² *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

³ *Samuel Senkow*, 50 ECAB 370, 373 (1999).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

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 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.⁶

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.⁷ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁸

In this case, the Office found that appellant failed to establish any compensable factors of employment. Appellant alleged that her June 11, 1999 heart attack resulted from her stressful work situation, but the record shows that appellant was at a nonwork function talking about a personal tragedy -- the death of her son -- when she sustained chest pains that ultimately hospitalized her for five days.

Appellant alleged that confrontations with her supervisor, particularly in October and November 1999, also contributed to her depression.

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.⁹ Personal perceptions and feelings alone are not compensable under the Act.¹⁰

Appellant provided a handwritten diary of her interactions with Ms. Murphy from February through June 1999 and on September 21 and October 26, 1999. However, none of appellant's entries demonstrates that her supervisor confronted or cursed her personally. What the entries do document are appellant's personal reactions to Ms. Murphy's managerial style and appellant's own feelings about her work. Such perceptions are not compensable under the Act because they are considered to be self-generated and thus not caused by employment factors.¹¹

While statements from coworkers mentioned appellant's allegations and generally discussed her health, there were no specific dates or details of the alleged confrontations. Ms. Murphy explained that her interactions with appellant as team leader and then supervisor

⁶ *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

⁸ *Donald E. Ewals*, 45 ECAB 111 (1993).

⁹ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁰ *Earl D. Smith*, 48 ECAB 615, 650 (1997).

¹¹ See *Robert W. Jones*, 51 ECAB 137, 143 (1999) (finding that the record failed to support appellant's allegation that he was publicly castigated for poor work performance and harassed by his supervisor's managerial feedback).

concerned appellant's deficiencies in processing her assigned cases. Inasmuch as appellant provided no detailed explanation of her allegations and failed to submit any corroborating evidence, the Board finds that she has failed to establish a compensable factor of employment.¹²

The Office found that five of appellant's allegations were established as factual -- the supervisor's scrutiny of appellant's work, the unacceptable performance rating, the denial of leave without pay, changes in her work schedule and a proposed five-day suspension.

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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably in carrying out its managerial and administrative duties.¹³ Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.¹⁴

While appellant generally alleged that her supervisor denigrated her intelligence and always found her work product unsatisfactory, the record contains no evidence showing any error or abuse on the part of Ms. Murphy or the employing establishment in supervising appellant. Appellant received an unacceptable performance rating on November 17, 1999, requested reassignment on January 6, 2000 as a reasonable accommodation, which was denied and was granted leave without pay until March 5, 2000.

On May 16, 2000 appellant was informed that the employing establishment could not hold her position open indefinitely and offered her options. However, nothing in the record establishes that the employing establishment erred or acted abusively in carrying out these managerial functions. Therefore, appellant has failed to establish a compensable factor in this regard.¹⁵

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's claim for merit review.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹⁶ Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.¹⁷

¹² 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).

¹³ *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁴ *Anna C. Leanza*, 48 ECAB 115, 121 (1996).

¹⁵ 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).

¹⁶ 5 U.S.C. § 8128(a) ("The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹⁸ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁹

Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.²⁰

With her request for reconsideration, appellant submitted Dr. Andrews' reports dated August 7, 2000 and June 19 and October 31, 2001. While these reports are new evidence, they are immaterial to the issue in the case. The reports stated that appellant's depression and post-traumatic stress disorder were related to her on-the-job injury and treatment by her supervisor and that the stress of work and the course of her compensation case aggravated her predisposition to heart attacks.

However, the pertinent issue in this case is appellant's failure to establish a compensable factor of employment.²¹ Because appellant has not demonstrated through factual evidence any work factors that caused her emotional or physical conditions, the medical evidence need not be considered.²²

The three letters from appellant's therapist are also irrelevant to the pertinent issue. The therapist concluded that appellant's stressful work environment caused her problems and that she had two heart attacks immediately following a confrontation with her supervisor. Again, the issue is appellant's failure to establish a compensable factor of employment. The therapist provided no corroboration of appellant's allegations regarding the June 11, 1999 incident, which the Office found not factually established. Therefore, this evidence is insufficient to require the Office to reopen appellant's claim.

¹⁷ *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

¹⁸ 20 C.F.R. § 10.608(a) (1999).

¹⁹ 20 C.F.R. § 10.606(b) (1)-(2).

²⁰ 20 C.F.R. § 10.608(b).

²¹ The Office found that the factors alleged by appellant did not arise in the performance of duty. Rather, these factors concerned administrative and personnel matters within the purview of the employing establishment. Absent a showing of error or abuse by the employing establishment, such factors do not constitute regular or specially assigned duties of the employee. *William H. Fortner*, 49 ECAB 324, 325 (1998).

²² *See John Polito*, 50 ECAB 347, 350 (1999) (because appellant failed to establish any compensable employment factors, the Board need not consider the medical evidence of record).

Similarly irrelevant is the letter from a former coworker describing his perception of the management capabilities of appellant's supervisor. None of his remarks or recollections is pertinent to establishing a compensable work factor stemming from appellant's interactions with her supervisor, nor does he address the June 11, 1999 incident. Therefore, appellant has failed to meet the subsection (iii) requirement of relevant and pertinent new evidence.²³

Appellant has also failed to show that the Office erred in interpreting the law and regulations governing her entitlement to compensation under the Act, nor has she advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request.

The February 15, 2002 and April 5, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 1, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

²³ See *Eugene L. Turchin*, 48 ECAB 391, 397 (1997) (finding that appellant's failure to submit new and relevant evidence on reconsideration justified the Office's refusal to reopen his case for merit review).