

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN I. RHINESMITH and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Chamblee, GA

*Docket No. 03-271; Submitted on the Record;  
Issued April 10, 2003*

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DECISION and ORDER

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

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On September 20, 2001 appellant, then a 48-year-old tax examiner, filed an occupational disease claim alleging that her emotional condition resulted from job stress and a constant demand for medical documentation of her use of leave for syncopal episodes (fainting spells). She alleged depression and anxiety to the point of suicidal preparation and mental breakdown.

In an April 21, 2000 report, Dr. Kenneth J. Sobel, Board-certified in internal medicine, stated that appellant's current medical problems included malignant vasovagal/vasodepressor syncope, insulin-dependent diabetes, hyperthyroidism, hyperlipidemia, peptic ulcer, migraine headaches, renal insufficiency and asthma. He added that appellant, whom he had treated since 1994, first experienced syncope in August 1993, that the frequency of syncopal episodes had decreased and that no true recovery was likely.

In response to an Office of Workers' Compensation Programs inquiry, appellant detailed several factors and incidents, beginning in 1993, when she won a grievance after being furloughed and given a lower evaluation than previously. In early 1994 she was disciplined for leaving taxpayers' documents unsecured.<sup>1</sup> Management refused to allow appellant to train others while younger coworkers were upgraded and given easier assignments. She applied for numerous positions within the employing establishment but was never selected. Her requests for administrative leave during Hurricane Opal and a subsequent ice storm were denied.<sup>2</sup> Appellant was written up for doing nonwork tasks just before the end of her tour.

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<sup>1</sup> Appellant's grievance concerning this matter was settled on May 23, 1994.

<sup>2</sup> Grievances filed in February 1996 concerning this leave were dropped.

During May 1996 appellant, a seasonal employee, was detailed and had transportation difficulty in reaching her new office, which had no health unit. She sustained a blackout in June 1996 and then was furloughed while on disability compensation, while coworkers received details to other sections.

During 1997 appellant was repeatedly asked to supply medical documentation for leave used because of her blackouts. She disagreed with her performance evaluation during this period and her step increase was delayed due to previous job furloughs. On March 5, 1998 appellant had thyroid surgery and was informed that she had exhausted the leave bank. In 1999, she obtained a customer service job but was unable to secure the day shift and had to decline. In 2000, appellant was again repeatedly asked for medical documentation for her leg surgery and neurology studies. Also management refused to perform a desk audit even though her workload was growing.

In 2001, appellant was promoted to a new job but received inadequate training. The lead/senior employee had “a really bad attitude and was always in a nasty mood” when appellant asked questions. In March, appellant was asked for documentation for repeated unscheduled absences from work due to blackouts.<sup>3</sup> Her request for leave under the Family Medical Leave act was denied.<sup>4</sup> On July 3, 2001 appellant was criticized by her supervisor and left her desk for the health unit. She returned to work on July 5, 2001 and was written up for leaving her desk without permission. Subsequently, appellant was admitted to the hospital for major depression. She was discharged on August 3, 2001.

On October 9, 2001 the employing establishment stated in a memorandum that the only times it requested medical documentation was when appellant applied for advanced sick leave and leave under the Family Medical Leave Act or when she requested special accommodation because of her condition. In March 2001, updated medical documentation was necessary because appellant did not want emergency personnel contacted when she had a blackout, which was against policy. At that time medical documents in the file were 11 months old.

On January 19, 2002 the Office denied appellant’s claim on the grounds that she had failed to establish any compensable factors of employment. The Office identified the following factors: (1) discipline for doing personal work; (2) furloughs following her medical absences from work; (3) a job transfer in 1996, which resulted in transportation difficulties; (4) delays in processing her compensation claims; (5) being charged as absent without leave following a blackout at work; (6) an unfavorable performance review in 1998; and (7) grievances that remain unresolved.

Appellant requested reconsideration on July 9, 2002 and submitted a lengthy summary of her allegations as well as her attorney’s argument. She also provided a copy of testimony from

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<sup>3</sup> A March 1, 2001 memorandum noted that appellant had been absent for all or part of eight days in the past five pay periods and that nearly every absence was unscheduled. The memorandum also noted appellant’s request that only her husband be called when she suffered a blackout and not emergency personnel.

<sup>4</sup> Appellant was granted 120 hours of leave from July 9 through September 9, 2001 from the voluntary leave bank, to which she contributed.

Dr. Sobel before an administrative law judge for the Equal Employment Opportunity (EEO) Commission, a psychiatric evaluation dated July 26, 2001 and two reports dated September 18, 2001 and May 19, 2002 from Dr. R. Michael Allen, a psychiatrist.

On July 26, 2002 the Office asked the employing establishment to provide documentation of appellant's EEO decision and grievance resolutions and to comment on the statements submitted by appellant.

On October 8, 2002 the Office denied appellant's request on the grounds that the evidence submitted was insufficient to modify 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.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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 Federal Employees' Compensation Act.<sup>9</sup>

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

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<sup>5</sup> *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

<sup>6</sup> *Samuel Senkow*, 50 ECAB 370, 373 (1999).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Frank B. Gwozdz*, 50 ECAB 434, 336 (1999).

<sup>9</sup> *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>10</sup> Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.<sup>11</sup>

In this case, the Office found that appellant had failed to establish any work factors that were covered under the Federal Employees' Compensation Act. The Office explained to appellant what factual support was necessary to establish that she was overworked or that the employing establishment erred or acted abusively in its managerial functions. However, none of appellant's statements relating to her federal employment was substantiated by any other factual evidence, such as the findings of EEO complaints or grievances of the accounts of witnesses.

The Board has long held that allegations alone by a claimant are insufficient without probative and reliable evidence corroborating the allegations.<sup>12</sup> The 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.<sup>13</sup> Personal perceptions and feelings alone are not compensable under the Federal Employees' Compensation Act.<sup>14</sup>

Appellant alleged that she never received the proper training for the positions she held, that her performance evaluations were purposefully constructed to keep her in a first-to-furlough status and that her unfavorable 1998 appraisal was changed due to a grievance. However, she provided no corroborating evidence of these allegations, such as a denial of a request for training or copies of her appraisals.

Appellant expressed her concerns that she was unable to make her quotas and was anxious about her ability to meet "unrealistic" standards of performance and complete her duties successfully. She also complained that coworkers "faked their numbers," that management ignored the situation and that her supervisors were prejudiced against her. Again, no supporting evidence of these statements was submitted. Appellant's personal perceptions of anxiety job insecurity and favoritism are self-generated reactions to situations at work and are not covered under the Federal Employees' Compensation Act.<sup>15</sup>

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.<sup>16</sup> In determining whether the employing establishment erred or acted abusively, the

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<sup>10</sup> *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

<sup>11</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>12</sup> *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

<sup>13</sup> *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 25 (1991).

<sup>14</sup> *Earl D. Smith*, 48 ECAB 615, 650 (1997).

<sup>15</sup> See *Robert W. Johns*, 51 ECAB 137, 143 (1999) (finding that appellant's perception that he was subjected to public castigation for poor work performance was self-generated and not supported by any corroborating evidence).

<sup>16</sup> *William H. Fortner*, 49 ECAB 324-25 (1998).

Board has examined whether the employing establishment acted reasonably.<sup>17</sup> Unless the evidence discloses error or abuse on the part of the employing establishment, administrative or personnel matters will not constitute compensable employment factors.<sup>18</sup>

Appellant complained about being counseled about nonwork matters and union activities but such discipline is an administrative function and not related to regularly or specially assigned duties. Absent evidence of error or abuse by the employing establishment, such discipline is not compensable. Other administrative functions include the denial of requests for transfer and promotion, furloughs and leave matters and job assignments. Appellant claimed that she was wrongfully furloughed and filed a grievance, which she won, but she presented no evidence of any details or decision in this matter. She claimed that she was required to produce much more work than fellow employees but submitted no evidence of this allegation either.

Appellant also generally alleged harassment by her supervisors regarding her ability to perform her duties. For harassment to constitute a compensable work factor under the Act there must be evidence that harassment or discrimination did in fact occur.<sup>19</sup>

In this case, appellant has offered no evidence that she was harassed at work. She claimed that she was treated in a disparate manner by two supervisors, who were not of her race, but submitted no witness statements of any specific incident. Appellant described a meeting during which her supervisor discussed a manager's performance negatively, but again no evidence corroborating any harassment or discrimination toward appellant was produced.

Appellant referred to a meeting with her supervisor on July 3, 2001, when errors in her casework were being discussed. She stood up, threw her pen down and said: "I do n[o]t have to take this." Appellant walked away from her desk and went to the health unit. Although she alleged "daily torment and intimidation" from her supervisor, her manager stated that the supervisor used a conversational tone to explain the correct processing and that she reported later that "something just snapped." The Board finds that appellant has failed to establish that any harassment actually took place.<sup>20</sup>

Appellant has generally indicated that her work environment was hostile and that management acted abusively, but there is no evidence in the record supporting these allegations. She has failed to provide any specific details of managerial actions relating to administrative or personnel matters that could be shown to be error or abuse.<sup>21</sup> Appellant has also failed to submit

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<sup>17</sup> *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>18</sup> *Anna C. Leanza*, 48 ECAB 115, 121 (1996).

<sup>19</sup> *Ronald C. Hand*, 49 ECAB 113, 116 (1997).

<sup>20</sup> *See Christophe Jolicoeur*, 49 ECAB 553, 56 (1998) (finding that appellant failed to establish that his supervisor was verbally abusive).

<sup>21</sup> *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).

any corroborating factual evidence of her other allegations.<sup>22</sup> Therefore, she has failed to establish a compensable factor.

The October 8 and January 9, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>23</sup>

Dated, Washington, DC  
April 10, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>22</sup> 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).

<sup>23</sup> Because appellant failed to establish any compensable employment factors, the Board need not consider the medical evidence of record. *John Polito*, 50 ECAB 347, 350 n. 18 (1999).