

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA K. MITCHELL and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cheyenne, WY

*Docket No. 03-1281; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On January 11, 2002 appellant, then a 48-year-old nurse, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder. She attributed her emotional condition to charges that she abused a patient.

In a statement accompanying her claim, appellant related that on July 25, 2001 Kerri Primack, a manager with the employing establishment, told her that she had to leave work due to the possibility of pending patient abuse charges. She stated that on July 30, 2001 Ms. Primack called her at home and told her that she was "accused of feeding a resident his emesis." Appellant described the subsequent investigation, which included providing testimony. She stated that, when she returned to work on August 11, 2001 following a scheduled two-week vacation she was "reassigned to the pharmacy department" and forbidden to have contact with patients. Appellant stated that both her coworkers and patients asked her about the investigation. She noted that at a meeting on August 31, 2001 she received a proposed two-week suspension. Appellant related:

"During the meeting I was verbally informed I needed to contact [s]ecurity to make arrangements to 'clean out my personal items from my office.' I was also told that at the conclusion of the investigation, a report would be filed with the National Nursing Office in Washington, D.C., and would eventually be given to the Wyoming State Board of Nursing and my nursing license could be revoked."

Appellant further related that, at a meeting on September 7, 2001, the parties concurred that she should receive a letter of admonishment and a reassignment to the Ambulatory Care Unit with the same hours and pay. She indicated that the parties agreed that the letter of admonishment would not be placed in her file or sent to the National Nursing Office. Appellant noted that she "insisted on a confidentiality clause" in the agreement. She stated:

“Tuesday, September 11, 2001, I received a letter of admonishment and found out it would be placed in my personal record and [the] nursing service would be notified. This was not the agreement we discussed but I had to put an end to it... The letter has been removed in six months.”

Appellant related that the nursing staff at the Ambulatory Care Unit told her manager that she was “leaving the unit for long periods of time.” She stated that, beginning January 16, 2002, she took sick leave for eight weeks due to loss of weight and possible work stress. Appellant noted that she underwent gallbladder surgery on February 5, 2002 and, when she returned to work following her surgery, on the advice of her physicians, she was transferred from ambulatory care to the recovery room. She concluded by noting that she still felt anxious and uncomfortable around coworkers who knew about the patient abuse investigation.

By decision dated March 21, 2003, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that she did not establish an injury in the performance of duty. The Office found that she had not alleged a compensable factor of employment.

The Board finds that appellant has not established that she 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 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 employee’s fear of a reduction-in-force or his 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 she 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

¹ 5 U.S.C. §§ 8101-8193.

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).

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 claimed emotional condition to the employing establishment's investigation into charges that she abused a patient. The record indicates that the employing establishment investigated appellant after allegations that she fed a patient his emesis. Specifically, in its proposed 15-day suspension of appellant dated August 31, 2001, the employing establishment noted:

“On July 25, 2001 you were feeding a resident of the Extended Care Unit. The resident was heard to say ‘I [am] going to throw-up’ and you were heard to say ‘If you do I [will] feed it back to you.’ You were seen to have caught some food in a container. You were seen stirring the contents of the cup into the patients remaining food and feeding it back to the patient.”

An employer has the right to conduct investigations if wrongdoing is suspected.⁷ The Board has held that investigations that do not involve an employee's regularly or specially assigned duties are not considered to be employment factors. Such investigations are an administrative function of the employing establishment.⁸ In this case, appellant has submitted no evidence of error or abuse by the employing establishment in its investigation into allegations that she committed patient abuse. While it appears that the employing establishment entered into a settlement agreement whereby appellant's proposed 15-day suspension was reduced to a letter of admonishment, the mere fact that the employing establishment lessened disciplinary action towards her does not establish that the employing establishment erred or acted in an abusive manner.⁹ Appellant has not submitted sufficient evidence to establish error or abuse by the employing establishment in discharging its administrative duties and thus has not established a compensable factor of employment.

Regarding appellant's reassignment, first to the pharmacy department and then to the Ambulatory Care Unit, the Board notes that the assignment of work is an administrative function of the employing establishment and not a duty of the employee.¹⁰ Appellant has submitted no evidence showing error or abuse by the employing establishment in transferring her to the

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

⁶ *Id.*

⁷ *Bernard Snowden*, 49 ECAB 144 (1997).

⁸ *Patricia A. English*, 49 ECAB 532, 537 (1998).

⁹ See *Joe Hendricks*, 43 ECAB 850 (1992).

¹⁰ *Janet D. Yates*, 49 ECAB 240 (1997).

pharmacy department and away from patient care during the course of its investigation of the charges of nursing abuse. She further has not submitted evidence of error or abuse by the employing establishment in transferring her to the Ambulatory Care Unit as part of a settlement agreement. Moreover, it appears that appellant, at her request, transferred from the Ambulatory Care Unit to the recovery room upon her return to work following surgery.¹¹

Finally, appellant's reaction to seeing coworkers who knew about the investigation of her for patient abuse charges is a personal frustration that is unrelated to her job duties and, therefore, is not compensable.¹²

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.¹³

The decision of the Office of Workers' Compensation Programs dated March 21, 2003 is affirmed.

Dated, Washington, DC
August 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹¹ Appellant has not submitted any evidence in support of her contention that coworkers in the Ambulatory Care Unit erroneously told the manager that she was away from her workstation for prolonged periods.

¹² See generally *Gracie A. Richardson*, 42 ECAB 850 (1991).

¹³ 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).