

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELEANA S. EDENS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Washington, DC

*Docket No. 03-1781; Submitted on the Record;
Issued December 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On October 17, 2001 appellant, a 59-year-old scientific and technical adviser, filed an occupational disease claim alleging that on April 1, 2001 she first realized that her depression was due to a hostile work environment caused by her supervisor. She attributed her emotional condition to harassment by her supervisor, Mark D. Rodgers, from September 1998 to May 9, 2001.

Appellant submitted a statement detailing incidents during the period September 1998 through May 9, 2001, copies of email correspondence, a December 15, 1998 admonishment and medical reports from Dr. Richard J. Redding, a treating physician specializing in family practice, and Dr. Judith A. Graser, a treating clinical psychologist.

Appellant alleged that Mr. Rodgers was unkind and unprofessional at their first meeting in September 1998. She alleged that he saw nothing wrong with his predecessor's comments regarding appellant's illness during a staff meeting. Appellant contended that her supervisor showed his "malicious attitude" toward her as well as his endorsement of "unkind, unprofessional and abusive treatment of employees." Appellant alleged that, on October 30, 1998, during a weekly staff meeting, her supervisor criticized one of her projects which embarrassed her and that he spoke rudely to her. Appellant alleged that Mr. Rodgers was not truthful with her, was unprofessional, harassed her, hostile, displayed a degrading attitude toward her during the period September 1998 through December 1998, and embarrassed her during meetings by his tone of voice and choice of words. In late 1998, appellant notes that her supervisor made comments regarding time she took off during the holidays and her delay in preparing a briefing for an upline supervisor, and that he related to another employee that appellant had to complete her review by the end of the year despite her "reasons for not being able to complete the review." Mr. Rodgers, on November 18 and 20, 1998, reacted angrily toward appellant for no reason and demanded that she cancel an important meeting as

punishment. Appellant alleged that her supervisor sent an email that she considered rude, aggressive and unprofessional “demanding actions that would impact” upon her program and performance. Appellant concluded that she could no longer interact with Mr. Rodgers without someone else being present. Mr. Rodgers lied to appellant that the meeting scheduled for December 9, 1998 and subsequently rescheduled to December 15, 1998 concerned her Volpe project when the meeting was to issue her an admonishment letter. At this meeting appellant alleged that Mr. Rodgers reduced her telecommuting days to punish her. In July 2000 at a meeting at the Volpe Center, appellant alleged that Mr. Rodgers rudely and loudly reprimanded her for comments that she made during the meeting. She also alleged that she was unable to leave the room because he had cornered her up against the wall. At a meeting with her peers, appellant alleged that Mr. Rodgers was rude and made embarrassing comments to her.

Appellant alleged that her supervisor reacted angrily toward a copy of an email message that she sent to him regarding the impact budget cuts would have on her program as requested by Tom McCloy, a coworker. Appellant alleged that Mr. Rodgers angrily informed her “that he did not like the tone of [her] email” and that he shouted at her and was angrily out of control in his actions toward her. In December 2000, appellant alleged that her supervisor chastised her regarding travel reimbursement for no reason and that he also shouted at her. Appellant alleged that in the summer of 2000 Mr. Rodgers reacted angrily toward her due to a comment made by the University of Texas, one of her researchers, regarding problems with his database. In the fall of 2000 Mr. Rodgers allegedly made comments to appellant showing that he did not like the University of Texas and that he wanted appellant to cut program funds for them. Appellant contended that she felt threatened by this situation and that he would reward her if she cut the programs funds as he requested. In April 2001, appellant alleged that her supervisor punished her by altering her telecommuting agreement because she missed a staff meeting that was to be held on her day off. She also alleged that Mr. Rodgers failed to provide clear instructions and as an example of this she stated that he instructed her not to talk to Dino, but to work with Dino. On April 11, 2001 appellant alleged that Mr. Rodgers spoke to her in a condescending manner, he informed her that she was to be in the office more frequently and that he continued to harass and lie to her. She indicated that due to this incident an unfair labor practice was filed against Mr. Rodgers for his comments on the union.

Appellant alleged that Mr. Rodgers yelled at her in front of her coworkers on April 23, 2001 during a staff meeting. He also informed appellant that he would not allow her to have a union representative at their meeting later that day and that she had to meet with him alone. On April 25, 2001 appellant alleged that Mr. Rodgers yelled at her and accused her of being absent without leave despite the fact that she had put in for medical leave for a dental appointment that morning. She alleged that her supervisor threatened to not approve the medical leave since her appointment was not until 10:30 a.m. and that she was to be in the office before that time. Subsequently, that day her supervisor expressed his concern that he had upset appellant earlier and that he was sorry for whatever he had done. He would allow appellant leave for up to a year and then he gave her administrative leave to have the afternoon off. Appellant submitted a leave request for leave without pay for 60 days and cited workplace stress. On April 26, 2001 Mr. Rodgers told appellant he would not approve the leave slip saying the leave was for workplace stress, but that he would sign the slip if she changed it to health issues. On May 9, 2001 appellant learned that her leave request starting May 10, 2001 had been denied by Mr. Rodgers and she became hysterical. Due to the denial of her leave request, she submitted a

request for leave under the Family Medical Leave Act which she alleged Mr. Rodgers only provisionally approved.

By decision dated May 22, 2002, the Office denied appellant's claim on the basis that she failed to establish that she sustained an emotional condition in the performance of duty.

Appellant disagreed with the decision and requested a hearing by letter dated May 24, 2002. A hearing was held on March 14, 2003 at which appellant represented herself and testified as to incidents she believed constituted harassment and caused her depression.

In a decision dated June 12, 2003, the Office hearing representative affirmed the denial of benefits.

The Board finds that appellant has not established an emotional condition in the performance of duty.

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish a claim for an emotional condition in the performance of duty, a claimant must submit factual evidence establishing employment factors or incidents alleged to have caused or contributed to the condition; medical evidence establishing an emotional or psychiatric disorder; and rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Appeals. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decisions dated May 22, 2002 and June 12, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

¹ *Jamel A. White*, 54 ECAB ____ (Docket No. 02-1559, issued December 10, 2002).

² *Debora L. Hanna*, 54 ECAB ____ (Docket No. 03-555, issued April 23, 2003).

Regarding appellant's allegations that Mr. Rodgers wrongly issued a December 15, 1998 letter of admonishment, that he wrongly chastised her in December 2000 regarding her travel reimbursement requests and that he changed her telecommuting schedule so she was required to come to staff meetings, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.³ Although the handling of disciplinary actions and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁴ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁵ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶ In the instant case, there is insufficient evidence that the employing establishment acted unreasonably in the issuance of the December 15, 1998 letter of admonishment. Appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant has contended that she was denied union representation, when Mr. Rodgers informed appellant that she would not meet with him alone and he stated that he would not allow a union steward in his office on April 23, 2001. Matters pertaining to union activities are not deemed employment factors.⁷ There is no evidence that the employing establishment in taking the actions it did in regard to denying appellant's request for union representation, erred or acted abusively. Appellant has not submitted any evidence such as witness statements or grievances to show that the employing establishment erred or acted abusively in denying appellant's request for a union representative.

Appellant also related that her supervisor behaved toward her in a hostile and abusive manner as she was the object of verbal accusations and attacks on her character. Specifically, she indicated that her supervisor was unreasonable in the manner in which he dealt with appellant by using sarcasm, mistrust and antagonism and personal attacks. 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 her regular duties, these may constitute employment factors. However, for harassment or discrimination to give rise to a compensable disability, there must be evidence that harassment or discrimination did in fact occur.⁸ Mere perceptions of harassment or discrimination are not compensable.⁹

³ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁴ *Id.*

⁵ *Debora L. Hanna*, 54 ECAB ____ (Docket No. 03-555, issued April 23, 2003).

⁶ *Id.*

⁷ *Dinna M. Ramirez*, 48 ECAB 308 (1997).

⁸ *Hong D. Nguyen*, 54 ECAB ____ (Docket No. 01-552, issued February 28, 2003); *Jamel A. White*, *supra* note 1.

⁹ *Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002).

Appellant has also alleged that Mr. Rodgers embarrassed her in front of her peers and coworkers at various meetings. The Board notes that vague allegations of a supervisor berating and taunting appellant are insufficient to establish a claim of harassment. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.¹⁰ In this case, appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.¹¹ She did not submit any statements from coworkers or supervisors with specific information that would support her allegations. Thus, appellant's statement is insufficient to meet appellant's burden of proof.

She also described difficulty in matters regarding sick and annual leave indicating that Mr. Rodgers refused to sign a leave slip on April 26, 2000 with the notation of workplace stress, and that on May 9, 2000 she was informed that Mr. Rodgers had denied her leave request and that he denied leave in a timely fashion. The Board has held that procedures regarding leave usage, pertain to personnel functions of the employer, rather than to duties of the employee¹² and are not compensable unless appellant establishes that the employing establishment erred or acted abusively in carrying out its administrative functions.¹³ In this case, there is insufficient evidence that the employing establishment erred or acted abusively in its handling of these administrative and personnel matters. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant has not established any compensable employment factors under the Act. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. Since appellant has not established a compensable employment factor, the Board will not consider the medical evidence of record.¹⁴

¹⁰ *Michael A. Deas*, 53 ECAB ____ (Docket No. 00-1090, issued November 14, 2001).

¹¹ *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (finding that a appellant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹² *Joseph C. DeDonato*, 39 ECAB 1260 (1988).

¹³ *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁴ *John Polito*, 50 ECAB 347, 350 n.18 (1999); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs dated June 12, 2003 is hereby affirmed.

Dated, Washington, DC
December 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member