United States Department of Labor
Employees' Compensation Appeals Board

JO ANN WAY, Appellant	)	
and	)	**Docket No. 03-2061**
	)	**Issued December 31, 2003**
DEPARTMENT OF THE AIR FORCE, BOLLING AIR FORCE BASE, Washington, DC, Employer	)	

Appearances:
Jo Ann Way, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 15, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 9, 2003 and a non-merit decision dated June 5, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a hearing as untimely filed.

FACTUAL HISTORY

On August 15, 2003 appellant, then a 53-year-old Equal Employment Opportunity (EEO) staffing specialist, filed a claim for compensation alleging that she developed generalized anxiety, chest pain, nausea and dizziness, resulting in her being taken to the hospital due to

events leading up to and occurring on August 17, 2001. Appellant stopped work on August 17, 2001 and has not returned.

In her original narrative statement and in an additional statement submitted in response to the Office's June 30, 2002 request for additional medical and factual evidence, appellant asserted that, shortly after she began working in her current position, around February 2001, she was repeatedly exposed to loud arguing between her supervisor, Jacqueline P. Gray and another supervisor, Ms. Covington. Appellant stated that these arguments were explosive, noisy and disruptive and took place near her cubicle approximately once or twice a week. She stated that these arguments lasted as long as 30 minutes and caused her coworkers to gather near her cubicle so that they could listen to the arguments or offer moral support. Appellant asserted that these arguments and the gathering of her coworkers near her desk were very disruptive to her work, especially when she was on the telephone with a client or trying to research an issue, and this caused her to fall behind, necessitating that she work through her lunch and after hours in order to try to stay abreast of her assignments. She asserted that she was in a state of constant worry about accomplishing her tasks and developed headaches and chest pains. Appellant further asserted that she also feared the arguments would escalate into an unsafe situation and cause someone to "go postal."

Appellant also alleged that on one occasion, in front of other coworkers, her supervisor verbally discredited a Recruitment Strategy Plan of Action she had devised and refused to support the project or see its benefits. Appellant stated that, ever since, she has feared that the heated arguments would be redirected towards her in the form of public chastisement. She reiterated that these combined factors rendered her anxiety-ridden and unable to concentrate and caused her to fall behind in her work, necessitating that she work overtime. Appellant stated that she worked overtime for periods of one to three weeks and frequently worked weekends, as her workload required. Appellant stated that she had suggested that these debates be moved to a more private location, but they continued to occur in the open. Appellant explained that on August 17, 2001 the day after a very disruptive day, she arrived at work feeling tightness in her chest, radiating pain into her arm. Appellant stated that she informed her supervisor of her condition and after discussing the previous days events, she decided that she needed to go to the hospital. Appellant further asserted that a coworker offered to drive her to the hospital, but was told that she could not leave her post. Appellant stated that her supervisor then suggested that she could drive herself to the hospital and simply pull off the road if she felt sick.

In further support of her claim, appellant submitted medical reports and progress notes from her treating physicians and therapists. A number of these reports are written by a clinical social worker and, therefore, cannot be considered medical evidence.[1] However, the record also contains a September 3, 2001 report from Dr. James W. Cockerill, a Board-certified psychiatrist, who stated that appellant had presented at the employing establishment clinic following her discharge from the hospital for chest pains. Dr. Cockerill stated that appellant had an initial diagnosis of adjustment disorder and occupational problem, and noted that she felt her condition was related to stress at work. Dr. Cockerill concluded that, while he could not yet offer an

[1] The reports of a social worker do not constitute competent medical evidence, as a social worker is not a "physician" as defined by 5 U.S.C. § 8101(2). *Ernest St. Pierre*, 51 ECAB 623 (2000).

opinion as to the cause of appellant's condition after meeting her only once, he felt she would benefit from a less stressful environment and from weekly group therapy sessions.

In a report dated October 25, 2001, Dr. Edgar Rodriguez, appellant's treating Board-certified family practitioner, stated that appellant had been under his care since September 27, 2001 for general anxiety disorder. He stated that she was showing some signs of improvement, but remained totally disabled from work. Dr. Rodriguez did not address the cause of appellant's diagnosed conditions in this narrative report. However, in an attending physician's report, form CA-20, dated April 10, 2002, Dr. Rodriguez listed his diagnoses as general anxiety, stress and depression, indicated by check marks that appellant had no history or evidence of any preexisting or concurrent injury or disease and that appellant's diagnosed conditions were causally related to her employment, and explained his conclusion stating that the responsibilities associated with appellant's new position were the source of the stressors triggering appellant's symptoms.

The employing establishment submitted several statements with respect to appellant's allegations. In a narrative statement dated May 13, 2002, appellant's supervisor, Ms. Gray, acknowledged that discussions often occurred within the office, but stated that these were not arguments, that they did not occur twice a week and did not escalate to a level where people were afraid. She stated that in fact the employees joked about these discussions and that, when appellant once mentioned the possibility of someone going postal, everyone laughed with her. Ms. Gray also acknowledged that appellant had mentioned to her several times that she was having difficulty keeping up with her work. Ms. Gray stated that she had analyzed the situation and had determined that appellant was not in fact qualified to be a journeyman staffing specialist, as she had claimed when she applied for the position and acknowledged that appellant did not have the skills to work at the full performance level. Ms. Gray stated that, because of this, appellant had been assigned an assistant to help her with her work. Ms. Gray also stated that she had told appellant on numerous occasions to take her lunch period and to leave for home on time, but that appellant continually failed to do either. With respect to the events of August 17, 2001, the date appellant stopped work, Ms. Gray stated that, after appellant informed her that she needed to go to the hospital, she did deny one coworker permission to drive appellant, but assigned another employee to drive her instead. She stated that there were logistical considerations regarding how appellant's car would be delivered to the hospital, so that she would not be stranded there, but emphasized that her comment about appellant driving herself to the hospital was made in jest.

In a separate unsigned statement submitted by the employing establishment, it acknowledged that appellant worked beyond her normal duty hours and further acknowledged that, during the first month of her employment, there were frequent disputes between appellant's supervisor and another employee, which took place either in the supervisor's office area or near the employee's cubicle. The employing establishment stated that these discussions did not involve threats and did not rise to the level of quarrelling or disruptive behavior and that appellant did not express any official concern for her personal safety. The employing establishment also asserted that the prolonged discussion regarding who could take appellant to the hospital on August 17, 2001 resulted from appellant's desire to be taken to a facility 15 miles away and not to the nearby medical clinic.

The employing establishment also submitted a statement from Vincent L. Lewis, who was chief of the personnel management branch over appellant. Mr. Lewis stated that when she applied for the position of EEO staffing specialist, appellant was made fully aware of the job duties and that she assured the employing establishment that she could fully perform the duties as required. Mr. Lewis stated that, in fact, appellant was under-qualified and her situation was not improved by the mentoring and extra training she received. He acknowledged that there were disagreements in appellant's office, but stated that these did not rise to a level, which would cause a reasonable person to fear for his or her safety and that he usually stepped in if they escalated. Mr. Lewis also stated that appellant was never required to deal with any irate persons herself and that, while she approached him several times to express dissatisfaction with her job, she never expressed concerns about this aspect of it.

The record also contains a statement from appellant's coworker, Paul E. Lucas. Mr. Lucas stated that the employing establishment's staffing section was in flux, with 100 percent personnel turnover within 3 years due to complaints regarding inadequate training and lack of respect. He stated that, by the time of appellant's August 17, 2001 incident, he had personally observed or heard Ms. Gray engage in verbal battles with most of the persons in the office. Mr. Lucas also confirmed that on August 17, 2001 there was a significant debate over who would take appellant to the hospital and further confirmed that Ms. Gray suggested appellant drive herself.

The final narrative statement contained in the record is from Dorothy Anderson, who was assigned to assist appellant with her work. Ms. Anderson stated that, as team leaders, Ms. Gray and Ms. Covington did not have an ounce of professionalism and that she personally witnessed heated public arguments between Ms. Gray and other employees. She stated that these disagreements were everyday occurrences and created a disruptive scene and a hostile work environment. Ms. Anderson confirmed that she stayed late with appellant many nights in order to help her with her workload when it was peaceful and quiet. Ms. Anderson also confirmed that there was a dispute on August 17, 2001 over who could take appellant to the hospital and that Ms. Gray suggested appellant drive herself.

In a decision dated January 9, 2003, the Office denied appellant's claim on the grounds that she failed to establish any compensable factors of employment.

By letter dated March 21, 2003, appellant requested an oral hearing and in a decision dated June 5, 2003, the Office denied appellant's request as untimely filed.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally

related to his emotional condition.[2] 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 his 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.[3] 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.[4]

Appellant 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 employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

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 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] 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.[8]

ANALYSIS

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated January 9, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these

[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[8] *Id.*

alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations that she was repeatedly exposed to loud arguing between her supervisor, Ms. Gray and another supervisor, Ms. Covington, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment and is not compensable under the Act.[9] While the Board has recognized the compensability of verbal altercations or abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[10] While not of a professional demeanor, appellant has not shown how the incidents, whereby Ms. Gray and Ms. Covington yelled in a room full of people, would rise to the level of verbal abuse or otherwise fall within the coverage of the Act.[11] In addition, to the extent that appellant would have preferred a more peaceful workplace, the Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment and, therefore, is also not compensable under the act.[12]

Appellant has also alleged that the loud arguments or discussions caused her to fear they would escalate into an unsafe situation and further caused her to fear future chastisement from her volatile supervisor. However, the Board has held that an appellant's fear of future injury is not a compensable factor of employment.[13]

Appellant also asserted that Ms. Gray had verbally discredited a Recruitment Strategy Plan of Action that appellant had devised and refused to support the project or see its benefits. However, the fact that appellant's supervisor did not agree with her that the plan was worthy of recognition and application was an administrative matter. Administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[14] Where disability results from an employee's emotional reaction to certain administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.[15] However, an administrative or personnel matter will be considered an employment

[9] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[10] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[11] *See, e.g., Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). *Compare Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (finding that a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

[12] *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

[13] *Mary A. Geary*, 43 ECAB 300 (1991).

[14] *Gregory N. Waite*, 46 ECAB 662 (1995).

[15] *Michael L. Malone*, 46 ECAB 957 (1995).

factor where the evidence discloses error or abuse on the part of the employing establishment.[16] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[17] In this case, appellant has not shown that it was abusive or erroneous.[18] Again, the Board has held that not every statement uttered in the workplace will give rise to coverage under the Act.[19] Thus, appellant has not established a compensable employment factor under the Act with respect to the lack of praise for her plan.

Appellant also asserted that, on August 17, 2001, Ms. Gray treated her unfairly by refusing to allow a certain coworker, who had volunteered, to drive her to the hospital and by suggesting that she could drive herself. To the extent that certain actions and incidents alleged as constituting harassment or disparate treatment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[20] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[21] In the present case, the employing establishment acknowledged that a certain employee was denied permission to drive appellant to the hospital, but stated that another employee was designated in her place. In addition, while the record establishes that there was a degree of confusion over how appellant would be transported to the hospital, the employing establishment explained that this was due to the fact that appellant wished to be taken to a distant hospital, rather than the closest clinic and that this necessitated some planning with respect to how appellant's car would be conveyed to the hospital so that she would not be stranded if discharged. Finally, while the record also supports and Ms. Gray admits, that she suggested that appellant drive herself to the hospital, she asserted that this was said in jest and was never a serious consideration. Therefore, as the employing establishment provided valid reasons for its actions, appellant has not established that she was the subject of disparate treatment or harassment on August 17, 2001.

Finally, with respect to appellant's allegations that, due to the loud, disruptive and distracting discussions between Ms. Gray and others, she fell behind in her work, necessitating that she work overtime and through her lunch hour and causing her to constantly worry that she would not accomplish her assigned tasks, the Board has held that emotional reactions to situations, in which an employee is trying to meet the position requirements are compensable.[22] In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the

[16] *Elizabeth Pinero*, 46 ECAB 123 (1994).

[17] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[18] *See Tanya A. Gaines*, *supra* note 11.

[19] *See Mary A. Sisneros; David W. Shirey*, *supra* note 9.

[20] *David W. Shirey*, *supra* note 9; *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[21] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[22] *See Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation. In this case, appellant's supervisor, Ms. Gray, acknowledged that appellant had mentioned to her on several occasions that she had difficulty keeping up with her work. Ms. Gray also stated that she had, in fact, determined that appellant was not fully qualified for the position and did not have the requisite skills to work at full performance level. For these reasons, appellant was assigned a special assistant. Ms. Gray also acknowledged that appellant often worked overtime and through her lunch hour. Mr. Lewis, the chief of the personnel management branch over appellant, also acknowledged that appellant was under-qualified and that her situation was not improved by additional training and mentoring. Finally, appellant's assertion is supported by the statement of Ms. Anderson, appellant's assistant, who confirmed that appellant often stayed late and worked through her lunch in order to keep up with her assigned tasks. Therefore, appellant has established her difficulty performing her assigned duties as a compensable factor of employment.

CONCLUSION

In the present case, appellant has identified a compensable employment factor with respect to her difficulty keeping up with her workload. As appellant has implicated a compensable employment factor, the Office must base its decision on an analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose.[23] After such further development as deemed necessary, the Office should issue an appropriate decision on this matter. In light of the Board's holding with respect to issue one, the Board need not address issue two with respect to whether the Office properly denied appellant's request for an oral hearing.

[23] *See Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 5 and January 9, 2003 be set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: December 31, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member