

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TINA F. WILLIAMS and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Milwaukee, WI

*Docket No. 01-1910; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

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

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

On April 4, 2000 appellant, a 46-year-old contract specialist, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she suffered from work-related depression and anxiety. Appellant explained that, beginning in March 1988, her employment aggravated her stress-related illness and by 1999 her condition had developed into severe depression and anxiety. She stopped working November 24, 1999.

Appellant submitted several statements alleging that she was subjected to disparate treatment, harassment, discrimination and retaliation. She also alleged that she had been overworked and that her involvement with the Purchase Card Management System (PCMS) program was a major stressor. Additionally, appellant attributed her emotional condition to incidents involving the handling of leave requests, the denial of a performance award and her unsuccessful attempt to upgrade her position description. The majority of her allegations pertained to interactions with her immediate supervisor, William D. Millard.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated April 16, 2001. The Office found that appellant failed to establish that any of the alleged employment factors occurred in the performance of duty. Appellant subsequently filed a timely appeal on July 16, 2001.¹

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

¹ By letter dated January 2, 2002, appellant's representative submitted additional evidence not previously of record. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

In order to establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.³ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.⁴

The Board has held that an emotional reaction to a situation in which an employee is trying to meet her position requirements is compensable.⁵ Additionally, the Board has found that employment factors such as an unusually heavy workload and the imposition of unreasonable deadlines are covered under the Federal Employees' Compensation Act.⁶ Appellant, however, need not prove that she was overworked in order to demonstrate a compensable employment factor.

In her statements dated June 19 and 20, 2000, appellant described a number of employment incidents that purportedly contributed to her emotional condition. She indicated that she had difficulty managing her workload in September 1996 when she was assigned responsibility for the PCMS; an electronic recordkeeping system for credit card purchases. Appellant explained that the PCMS was frequently inoperable and it was a major stressor from 1997 to 1999 because of the problems associated with the system. She further indicated that the time spent on the PCMS detracted from her other responsibilities overseeing the IBM maintenance program. Appellant stated that she worked long hours and on the weekends. She also alleged that she was not provided an equal opportunity to act in her manager's stead when he was away from the office. Appellant filed an Equal Employment Opportunity (EEO) complaint on September 18, 1999 alleging disparate treatment. Additionally, she stated that she was improperly denied a cash award in September 1999 and that her supervisor sabotaged her

² See *Kathleen D. Walker*, 42 ECAB 603 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

⁶ See *Georgia F. Kennedy*, *supra* note 5.

attempts to have her position upgraded to a GS-13. These actions were purportedly done in retaliation for appellant having filed an EEO complaint. She also alleged that her supervisor threatened to place her on absent without leave status when she ceased working in November 1999 due to her claimed emotional condition.

Appellant's supervisor, Mr. Millard, described her as an employee with a decade long history of performance problems, despite what he perceived to be adequate support, training and guidance. He characterized appellant as "unprofessional and untimely in accomplishing her duties." Mr. Millard noted that he had never given her an unsatisfactory performance rating and, in fact, she had received several extra effort cash awards recognizing her positive contributions. He acknowledged that the work performed by contract specialists during the latter half of any given fiscal year involved "long hours and work on weekends." Mr. Millard acknowledged that appellant was accountable for the IBM maintenance contract and the PCMS. However, he stated that appellant had a relatively light workload for a journey person contract specialist without supervisory responsibilities. While Mr. Millard indicated that appellant's work on the IBM maintenance contract was satisfactory, he noted that she had been criticized by several of her customers for delays in the preparation and issuance of purchase orders for IBM maintenance. He also stated that work on the IBM maintenance orders and the PCMS involved the use of newly implemented automated computer programs that sometimes caused frustration due to imperfections in the programs. Additionally, Mr. Millard stated that, "[w]hile there is some degree of stress associated with any procurement position, the volume of work assigned [appellant] provide[d] assurance that her workload [was] no more stressful than the workload of other procurement professionals throughout the [r]egion."

While appellant identified a number of noncompensable administrative and personnel matters,⁷ it is clear from her statements that she attributed her condition to her various job responsibilities. Appellant stated that the "PCMS was [her] major stressor from [1997 to 1999] because of the demand and the problems." In support of her claim, appellant submitted approximately 140 pages of email correspondence and office memoranda regarding work projects in which she participated. The emails indicate that the PCMS project encountered technical difficulties. Mr. Millard acknowledged that the automated computer system caused frustration due to imperfections in the programs. He also noted that "long hours and work on weekends" was not unusual.

As previously stated, when disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is

⁷ As a general rule, an employee's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act because it is not considered to arise out of and in the course of employment. To the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Kimber A. Stokke*, 48 ECAB 510, 512 (1997); *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997). Appellant's allegations concerning leave requests and absent without leave status, the denial of a performance award, her unsuccessful effort to upgrade her position description and irregular assignments as acting manager all pertain to administrative and personnel matters. Furthermore, the record does not establish that the employing establishment either erred or acted abusively in discharging its administrative responsibilities. Accordingly, the Office properly determined that these allegations represented noncompensable employment factors.

deemed compensable.⁸ In this instance, appellant alleged that her claimed condition arose, in part, as a result of her attempts to meet the demands of her position; particularly, her duties with respect to PCMS and the IBM maintenance contract. The Board finds that the evidence of record is sufficient to establish a compensable factor under *Cutler* based on appellant's regular and specially assigned work duties.

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.⁹ In the instant case, the Office did not address the medical evidence of record because it found that appellant had not established any compensable employment factors. As the Board has found at least one compensable factor established, an evaluation of the relevant medical evidence is required.

In a report dated May 24, 2000, Dr. John W. Carpenter, a Board-certified psychiatrist, diagnosed major depression, single episode, moderate and acute stress reaction. Appellant reportedly attributed her symptoms to a culmination of being overworked and being harassed by her supervisors since 1993. Additionally, Dr. Carpenter noted a history of several recent employment incidents. He stated that, since his initial evaluation in December 1999, appellant had consistently focused on job-related pressures and subsequent issues relating to her disability. Dr. Carpenter opined that appellant's current psychiatric condition was directly attributable to her employment experiences and that he was unaware of any other significant, nonrelated, contributing stressors.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁰ Although the Dr. Carpenter's opinion does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her claimed emotional condition is causally related to her employment, his opinion raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.¹¹

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's claimed emotional condition is causally related to her accepted employment exposure. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁸ *Lillian Cutler*, *supra* note 3.

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹¹ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The April 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member