

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HASTY P. FOREMAN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, West Haven, CT

*Docket No. 02-723; Submitted on the Record;  
Issued February 27, 2003*

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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 May 26, 2000 appellant, then a 42-year-old health technician, filed an occupational disease claim alleging that she sustained a panic/anxiety disorder due to factors of her federal employment. She stated:

“I have been diagnosed with a disability *via* OWCP [the Office of Workers' Compensation Programs] for [p]anic and [a]nxiety [d]isorder. On 8 May 2000 my tour of duty changed which requires me to be involved in heavy traffic both to and from my place of employment. This has aggravated my illness/disease.”<sup>1</sup>

By decision dated January 2, 2001, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury in the performance of duty. The Office found that appellant had not established any compensable factors of employment.

Appellant requested a hearing, which was held on June 26, 2001. In a decision dated September 17, 2001, the hearing representative affirmed the Office's January 2, 2001 decision.

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

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<sup>1</sup> The record indicates that appellant had a prior claim for a panic disorder accepted as arising out of a verbal altercation with a coworker on April 17, 1997. Appellant stopped work on June 29, 1998 and returned to work on November 2, 1998 at a lower salary and a different worksite. By decision dated July 26, 1999, the Office reduced appellant's compensation based on its finding that her actual earnings as a multi-skilled clerk effective November 2, 1998 fairly and reasonably represented her wage-earning capacity.

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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

Appellant primarily attributed her condition to her workshift beginning and ending a half-hour earlier such that she drove to and from work in heavier traffic. She related that, when she returned to work in November 1998, she was scheduled to work 8:00 a.m. to 4:30 p.m. but that her supervisor accommodated her request to work from 7:30 a.m. to 4:00 p.m. to avoid heavy traffic. Appellant stated that on May 2, 2000 her supervisor informed her that she had to work from 8:00 a.m. to 4:30 p.m. She related that she "experienced panic and anxiety attacks while driving both to and from work..." The Board has held that a change in an employee's workshift may, under certain circumstances, be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.<sup>6</sup> To show that an administrative action such as the change in workshift implicated a compensable employment factor, appellant would have to show that the employing establishment committed error or abuse.<sup>7</sup> In this case, appellant has not provided any evidence that the employing establishment erred or acted abusively in changing her workshift by a half hour. Thus, appellant has not established a compensable employment factor under the Act with respect to the proposed change in workshift.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>5</sup> *Id.*

<sup>6</sup> See *Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

<sup>7</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

Additionally, appellant's allegation that her commute to and from work caused her emotional condition does not constitute a compensable employment factor. The Board has held that the stress and strain of highway travel experienced by an employee commuting to work can be characterized as self-generated and arising from the hazards of the journey shared in common by all travelers.<sup>8</sup>

Appellant further expressed disagreement with the handling of her prior claim. She stated that she had to use sick and annual leave from June to November 1998 and now has to pay to have her leave restored. The Board notes, however, that the development of any condition related to the Office's or the employing establishment's handling of her compensation claim would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.<sup>9</sup>

Appellant also contended that the employing establishment should not have transferred her to a worksite 90 miles from her house when there were positions available at her old work location.<sup>10</sup> Appellant also noted that she returned to work at a lower grade and salary.<sup>11</sup> The Board has held, however, that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment absent a showing of error or abuse as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.<sup>12</sup> Appellant did not submit any evidence that the transfer or demotion was erroneous and therefore did not establish a compensable work factor.<sup>13</sup>

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.<sup>14</sup>

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<sup>8</sup> *Adele Garafolo*, 43 ECAB 169 (1991).

<sup>9</sup> *See George A. Ross*, 43 ECAB 436, 353 (1991).

<sup>10</sup> The employing establishment transferred appellant to a new work location to ensure that she would not have contact with the coworker with whom she had the verbal altercation in April 1997 which resulted in her accepted emotional condition.

<sup>11</sup> The Office paid appellant for her loss of wage-earning capacity.

<sup>12</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>13</sup> On appeal, appellant requested reimbursement of travel expenses, vocational rehabilitation, an explanation of why her compensation ceased and a copy of the transcript of her hearing before the Office. Appellant should make her requests to the Office as the Board's jurisdiction is limited to review of final decisions of the Office on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>14</sup> 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).

The decision of the Office of Workers' Compensation Programs dated September 17, 2001 is affirmed.

Dated, Washington, DC  
February 27, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member