

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFREDA HIGH and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, LANHAM OFFICE,
Lanham, MD

*Docket No. 03-226; Submitted on the Record;
Issued June 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained emotional stress leading to coronary angina on June 20, 2000 in the performance of duty.

On October 22, 2001 appellant, then a 52-year-old program analyst and team leader, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she sustained angina pectoris due to stressful telephone calls from Frank Sergovic, her branch chief, on June 20, 2000.¹ Appellant alleged that Mr. Sergovic refused "to sign [her] evaluation 10 days prior to due date [and] threatened to lower appraisal for no reason other than [she] applied for a new position." At the time of the alleged injury, appellant was detailed from the employing establishment's Lanham, Maryland office to its Detroit Computing Center.²

Appellant submitted witness statements from coworkers Janice Queen and Dora Holmes. In an October 17, 2001 letter, Ms. Queen stated that she was in Detroit with appellant at the time she "experienced an angina attack ... and [Ms. Queen was] aware that this attack was stress related." Ms. Holmes submitted an identical statement, also dated October 17, 2001.

Appellant submitted reports from Dr. Ravinder Rustagi, an attending Board-certified cardiologist, who had treated appellant since a July 1988, myocardial infarction. In a June 22,

¹ The Office of Workers' Compensation Programs correctly developed appellant's claim for angina pectoris and stress as an emotional condition claim, as appellant characterized her angina as secondary to emotional stress experienced as a result of telephone calls from Mr. Sergovic on June 20, 2000. Therefore, the threshold issue of the causal relationship of emotional stress to employment factors must be established prior to addressing the secondary condition of angina pectoris.

² On appellant's October 22, 2001 claim form, she listed "June 19, 2000" as the date of injury. However, in a January 10, 2002 letter and at the June 19, 2002 hearing, appellant corrected the date of injury to June 20, 2000. She explained that she used the June 19, 2000 date in error. Therefore, the Board will use the June 20, 2000 date as the date of injury in its presentation and discussion of the evidence.

2000 note, Dr. Rustagi stated that appellant required rest due to chest pain and shortness of breath. In a June 30, 2000 note, he stated that appellant should “avoid undue stress because of recurrent ... angina pectoris and ventricular arrhythmia.” In a January 10, 2002 report, Dr. Rustagi noted that appellant had a history of angina and “skipping heart beats especially when she [i]s under stress and overworked.” He recalled that on June 22, 2000 appellant described work-related stress, causing depression and anxiety. Dr. Rustagi prescribed an antidepressant and referred appellant to a psychiatrist. He stated that appellant’s increase in symptoms “lasting for so long [was] primarily related to her stressful job situations and tensions at her workplace and possibly her relationship with her previous boss.”³

In December 13, 2001 letters and an accompanying questionnaire, the Office advised appellant of the type of additional evidence needed to establish her claim, including factual corroboration of her allegations and a rationalized statement from her attending physician explaining how and why the alleged work factors would cause the claimed stress-related angina.

In a January 4, 2002 letter, appellant described receiving 4 or 5 telephone calls from Mr. Sergovic on June 20, 2000 approximately 10 days prior to her annual evaluation date. She stated that, during the conversations, Mr. Sergovic spoke in a harassing, hostile, demeaning manner, triggering chest pains. Appellant explained that, prior to June 20, 2000, Mr. Sergovic yelled at her, spoke to her disrespectfully and harassed her. Appellant noted that this caused her “to cry in a discouraging manner,” but did not cause chest pain. She described her relationship with Mr. Sergovic as “hostile.”

By decision dated February 4, 2002, the Office denied appellant’s claim on the grounds that none of the alleged incidents occurred in the performance of duty. The Office found that the June 20, 2000 telephone calls from Mr. Sergovic were not accepted as factual, including his threats to lower appellant’s performance evaluation.

Appellant disagreed with this decision and in a February 12, 2002 letter, requested a hearing before a representative of the Office’s Branch of Hearings and Review, held June 19, 2002. At the hearing, appellant clarified that she attributed the claimed angina pectoris and emotional stress only to the events of June 20, 2000, although Mr. Sergovic often yelled at her prior to June 20, 2000 and telephoned her on June 21, 2000.⁴ Appellant asserted that Mr. Sergovic deliberately harassed her by telephoning four times in eight hours on June 20, 2000 and that he was aware of her heart condition.⁵ Appellant explained that the main subject of the

³ Appellant also submitted June 13, July 18 and 24, 2000 medical bills for psychotherapy from Dr. Frances C. Welsing, an attending Board-certified psychiatrist and explanation of benefits forms from her insurance company for services rendered from June 22, 2000 to October 2001. Although Dr. Welsing signed the bills indicating that they were paid, she did not provide any findings or diagnoses in these bills, or otherwise address causal relationship. Therefore, they are of no probative medical value in establishing causal relationship. *Lucrecia M. Nielsen*, 42 ECAB 583 (1991). The insurance forms do not constitute medical evidence, as they do not appear to have been signed or reviewed by a physician. *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ The hearing representative advised appellant that she should consider filing a claim for occupational disease if she felt that her condition was caused by events occurring during more than one work shift.

⁵ Appellant had a myocardial infarction in July 1988, with triple coronary bypass performed in August 1988. She was off work for four months. At the time of the heart attack and surgery, appellant was employed at the employing establishment.

June 20, 2000 calls was her request that Mr. Sergovic complete a managerial evaluation required as part of her application for a promotion position. Appellant asserted that Mr. Sergovic had previously promised, then denied, a “Section 2” promotion, which she felt she deserved because of consistent outstanding ratings.

Appellant testified that the first telephone call she received on June 20, 2000 was from Kim Riley, her supervisor, who stated that Mr. Sergovic refused to sign the evaluation but would call her later. In the second call, Mr. Sergovic refused to sign the evaluation, then began to yell and threatened to lower her previous appraisal. He then stated that he would consult with another manager and call her back. In the third conversation, appellant explained to Mr. Sergovic that he had not given her the required evaluation. Mr. Sergovic stated that another manager told him he did not have to do the evaluation and again threatened to “lower it for her.” After Mr. Sergovic’s third call, appellant began having chest pains. She alleged that Mr. Sergovic called her again, screaming that he would not sign the evaluation and again threatening to lower the previous evaluation. Appellant returned home on June 22, 2000 and sought medical attention from Dr. Rustagi. As her heartbeat did not stabilize, appellant participated in daily cardiac rehabilitation from September through November, 2000.

Following the hearing, appellant submitted additional evidence.

In a July 1, 2002 letter, Ms. Queen recalled that, on June 20, 2000, appellant “received several telephone calls from National Office. [Appellant’s] tone of voice changed and she began to hold the [tele]phone away from her ear and you could hear a very loud voice yelling on the [tele]phone (Frank Sergovic).” Ms. Queen stated that appellant was “agitated and upset each time she talked on the [tele]phone. Because of the [tele]phone calls, [appellant] became ill and had to leave the team and go home.” Ms. Queen asserted that, while speaking with appellant “trying to calm her, we learned that they were trying to get her to accept a lower evaluation.”

By decision dated and finalized September 10, 2002, the Office hearing representative affirmed the February 4, 2002 decision, finding that appellant had failed to establish a compensable factor of employment. The hearing representative found that the June 20, 2000 calls did not occur in the performance of duty as they concerned her application for a new job and not her assigned duties. The hearing representative further found that appellant had not established that Mr. Sergovic committed error or abuse, which would bring the administrative matter of the job application under coverage of the Federal Employees’ Compensation Act. The hearing representative noted that each of Mr. Sergovic’s calls was made at appellant’s request to supply information regarding her job application. Therefore, Mr. Sergovic did not commit error by calling appellant at her request. The hearing representative further found that there was insufficient evidence to conclude that Mr. Sergovic behaved improperly during the conversations. Although Ms. Queen corroborated that Mr. Sergovic did yell, the hearing representative explained that it was not “untoward that an individual would raise his voice in the heat of a discussion,” and that “increased volume d[id] not rise to the level of verbal abuse.” The hearing representative also found that appellant’s reaction to Mr. Sergovic’s performance of his supervisory duties was not compensable, as there was no error or abuse shown.

Appellant filed her appeal with the Board on November 4, 2002.⁶

The Board finds that appellant did not establish that she sustained an emotional stress leading to angina pectoris in the performance of duty on June 20, 2000.

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 her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Act. On the other hand, where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁸

In this case, appellant alleged that she sustained emotional stress leading to angina pectoris due to receiving four harassing telephone calls from Mr. Sergovic, her branch chief, on June 20, 2000. The Office denied this claim by February 4, 2002 decision, affirmed by a September 10, 2002 decision, finding that the June 20, 2000 telephone conversations with Mr. Sergovic did not occur in the performance of duty as they concerned her application for a promotion and not her assigned duties.

The threshold issue is whether the June 20, 2000 conversations occurred in the performance of duty. Appellant stated that the main subject of the June 20, 2000 telephone conversations was Mr. Sergovic's refusal to sign an evaluation that she needed to complete her application for a promotion position. However, the processing of such an application is an

⁶ The case record contains a December 3, 2002 file transfer worksheet, releasing a copy of the record to the Board. Immediately following this worksheet is a December 13, 2002 letter to appellant from the Office's Branch of Hearings and Review concerning a request for an oral hearing. The date of this request does not appear in the December 13, 2002 letter. As the decision of the Office hearing representative was issued on September 10, 2002 it is unlikely that the December 13, 2002 letter refers to that decision. However, there is no request of record for a second oral hearing in the case. Also, there is no final decision of record pursuant to such a request. *Arguendo*, the Board and the Office may not simultaneously have jurisdiction over the same issue in the same case. Therefore, any decision of the Office issued during the pendency of appellant's appeal, adjudicating the emotional condition issue, would be moot. *Russell E. Lerman*, 43 ECAB 770 (1992); see *Douglas E. Billings*, *supra* note 3.

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

administrative matter, unrelated to appellant's assigned duties. The Board has held that the employing establishment's denial of a request for a different job, promotion or transfer, is an administrative decision, which does not directly involve an employee's ability to perform work duties, but rather constitutes an employee's desire to work in a different position.⁹ Thus, appellant's reaction to Mr. Sergovic's lack of cooperation in completing appellant's application is not compensable. Also, appellant testified at the June 19, 2002 hearing that she desired and deserved the promotion. However, an employee's desire to work in a different position is not compensable.¹⁰ Thus, appellant has not established a compensable factor of employment in this regard.

The Board has held, however, that administrative matters may be compensable if it is established that the employing establishment committed error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹¹ In this case, appellant submitted insufficient factual evidence to substantiate that Mr. Sergovic was obligated by some rule or regulation of the employing establishment to complete the evaluation she requested, such that it would be abusive or in error for Mr. Sergovic to fail to complete the evaluation. Thus, it may have been a reasonable exercise of supervisory discretion for him to refuse appellant's request. Therefore, appellant has not shown that Mr. Sergovic committed error or abuse by refusing to complete the evaluation. Thus, appellant's application for a promotion remains an administrative matter outside the scope of coverage of the Act.

Appellant also alleged that the June 20, 2000 telephone calls constituted harassment as Mr. Sergovic yelled and screamed at her. In her July 1, 2002 statement, Ms. Queen corroborated that she heard Mr. Sergovic yell at appellant over the telephone on June 20, 2000. However, the fact that a supervisor raises his voice during a conversation does not in and of itself warrant a finding of verbal abuse.¹² Therefore, although appellant did establish that Mr. Sergovic yelled at her, she has not established a compensable factor in this regard.

Appellant also alleged that, in the June 20, 2000 conversations, Mr. Sergovic threatened to lower a prior performance appraisal in retaliation for her applying for the promotion. The Board notes that the Office hearing representative did not make specific findings regarding this allegation. If established as factual, such a threat might be compensable as harassment.¹³ However, the hearing representative's omission is moot, as appellant did not submit evidence corroborating this threat. While Ms. Queen's July 1, 2002 statement indicates that Mr. Sergovic shouted or yelled at appellant over the telephone, Ms. Queen did not recall hearing Mr. Sergovic state that he would lower appellant's performance rating. Instead, Ms. Queen related that, after

⁹ *Ernest J. Malagrida*, 51 ECAB 287 (2000).

¹⁰ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹¹ *See Richard Dube*, 42 ECAB 916 (1991).

¹² *Carolyn S. Philpott*, 51 ECAB 175 (1999).

¹³ *See Ernest J. Malagrida*, *supra* note 9 (appellant was unable to corroborate his allegation that his supervisor threatened "that he would do things" to appellant).

the conversations ended, appellant alleged that Mr. Sergovic threatened to lower a previous appraisal. Thus, appellant has not established as factual that Mr. Sergovic stated that he would lower her performance rating.

Appellant also alleged that she had a difficult relationship with Mr. Sergovic prior to June 20, 2000. The Board has held that such a situation may be a compensable factor of employment, if the employee presents sufficient corroborating evidence.¹⁴ However, there are two problems with this allegation, the first being a lack of corroborating evidence. In a January 4, 2002 letter, appellant stated that Mr. Sergovic was hostile and had yelled at her on numerous occasions, causing her to cry and become discouraged. However, appellant did not submit witness statements or other factual evidence corroborating her account of events. Therefore, appellant has not established a difficult relationship with her supervisor as a compensable factor of employment.

A second problem with establishing a difficult relationship with Mr. Sergovic as a compensable work factor is that events prior to and after June 20, 2000 are not relevant to appellant's claim. Appellant claimed only that she sustained a traumatic injury on June 20, 2000 not an occupational disease due to work factors occurring over more than one work shift. The Office hearing representative noted at the June 19, 2002 hearing that appellant may wish to file an occupational disease claim, as opposed to the current claim for a traumatic injury, if she attributed her condition to workplace events occurring during more than one work shift. However, appellant affirmed at the hearing that she attributed her emotional stress leading to angina only to the events of June 20, 2000. Therefore, the prior status of appellant's relationship with Mr. Sergovic is not relevant to her claim.

Consequently, appellant has not established that she sustained an emotional condition leading to angina pectoris on June 20, 2000, as she submitted insufficient evidence to establish a compensable factor of employment.¹⁵

¹⁴ *Sherman Howard*, 51 ECAB 387 (2000).

¹⁵ As appellant has not established any compensable factor of employment, the medical evidence need not be reviewed. *Margaret S. Krzycki*, 43 ECAB 384 (1992).

The decision of the Office of Workers' Compensation Programs dated and finalized September 10, 2002 is hereby affirmed.

Dated, Washington, DC
June 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member