

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE A. FINNEGAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, NY

*Docket No. 03-605; Submitted on the Record;
Issued June 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

This is the second appeal in this case.¹ In a decision dated August 29, 2001, the Board affirmed an Office of Workers' Compensation Programs' hearing representative's decision dated June 26, 2000 and finalized on June 27, 2000. The Board found that appellant had not alleged and substantiated compensable factors of employment as contributing to an emotional condition. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

Following the Board's August 29, 2001 decision, appellant's representative requested reconsideration by letter dated August 14, 2002. In support of her request, she submitted reports of contact dated June 2 and 16, 1999, reports dated August 8, 1999 and March 14, 2000 from Dr. Rosanne O. Ecker, an attending licensed psychologist, reports dated June 21 and July 26, 1999 from Dr. Karen K. Heitzman, an attending Board-certified internist with a subspecialty in geriatrics, an August 16, 1999 report from Dr. Jenifer G. Rich, a Board-certified psychiatrist with a subspecialty in geriatric psychiatry, and a May 21, 2002 report by Dr. Jud A. Staller, an attending Board-certified psychiatrist with a subspecialty in child psychiatry, in support of her request. Appellant also alleged that the Board had erred in failing to find any compensable factors.

In a June 21, 1999 report, Dr Heitzman opined that appellant was totally disabled from performing her usual duties as a secretary.

Dr. Heitzman, in a July 26, 1999 report, noted that appellant had "a long history of intermittent problems with depression and anxiety. She stated that appellant had been doing well until the fall when appellant stated "she had become embroiled in a whistle-blowing situation and was getting more and more pressure at work to withdraw her complaints."

¹ Docket No. 01-174 (issued August 29, 2001).

In an August 9, 1999 report, Dr. Ecker diagnosed appellant with depression and anxiety which she attributed to appellant's work conflicts. She noted that appellant was "almost exclusively focused on her preoccupation with her employer's mistreatment of her, her anxiety about going to the workplace, speaking with V[eterans] A[dministration] personnel and her hopelessness in resolving the conflict."

In an August 16, 1999 report, Dr. Rich noted appellant "has been stressed following problems at work and has been out on disability since April." Dr. Rich diagnosed severe depression based upon appellant's "scores on the Ham-D 99."

Dr. Ecker, in a March 14, 2000 report, noted she had been treating appellant for depression since May 6, 1999. She stated that part of her treatment was to encourage appellant to participate in activities she enjoyed and get out of her house.

In a May 21, 2002 letter, Dr. Staller stated that he had evaluated appellant in June 2000 and "concluded that work-related matters were the cause of her dysfunction or psychiatric condition" and he had "no information that would lead me to amend that opinion or report."

By decision dated October 2, 2002, the Office reviewed the case on the merits and denied modification.

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

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by

² *Alice F. Harrell*, 53 ECAB ____ (Docket No. 01-1249, issued August 1, 2002).

³ *Judy L. Kahn*, 53 ECAB ____ (Docket No. 00-457, issued February 1, 2002).

the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In support of her August 14, 2002 request for reconsideration, appellant submitted August 8, 1999 and March 14, 2000 reports from Dr. Ecker, reports dated June 21 and July 26, 1999 from Dr. Heitzman, an August 16, 1999 report by Dr. Rich and a May 21, 2002 report by Dr. Staller. As the Board indicated in its prior decision, appellant must first establish a compensable factor of employment before the medical evidence is reviewed on the issue of causal relationship between an emotional condition and employment.⁵ Dr. Heitzman noted that appellant had a history of depression and that her condition deteriorated after appellant became a whistleblower. Drs. Staller and Ecker attributed appellant's depression to her employment without providing details of the factors. Furthermore, the opinions of Drs. Ecker, Heitzman and Staller were considered in the initial denial of appellant's claim. Dr. Rich offers no opinion as to the cause of appellant's depression. Appellant has not submitted evidence supporting retaliation, harassment or discrimination by her supervisor and coworkers, nor has she submitted evidence of error or abuse by the employing establishment in an administrative or personnel matter.⁶

The Board therefore finds that appellant has not substantiated a compensable factor of employment. As appellant has not established any compensable employment factors, the Board will not address the medical evidence.⁷ It is appellant's burden of proof to establish her claim, and the Board finds that she has not met her burden of proof in this case.

The October 2, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Janice I. Moore*, 53 ECAB ___ (Docket No. 01-2066, issued September 11, 2002).

⁶ *See Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).