

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELICIA L. PFOUTS and DEPARTMENT OF COMMERCE,
CENSUS BUREAU, Durham, NC

*Docket No. 03-716; Submitted on the Record;
Issued June 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met her burden in establishing that she sustained an emotional condition in the performance of duty.

On November 1, 2000 appellant, then a 38-year-old temporary clerk, filed a notice of traumatic injury alleging that on August 11, 2000 she suffered unfair, abusive and discriminatory treatment from her assistant manager, Dora Durante. She claimed that the incidents on August 11, 2000 caused her severe depression and chest pain. An emergency department report indicated that appellant had symptoms of depression, shortness of breath and chest pain on August 15, 2000. A radiology report performed on August 15, 2000 showed no evidence of pulmonary disease.

By letter dated January 4, 2001, the Office of Workers' Compensation Programs notified appellant that additional factual and medical information was necessary to establish her claim. Specifically, the Office asked appellant to describe the employment-related conditions or incidents, which she believed contributed to her condition. No additional evidence was received.

By decision dated February 14, 2001, the Office denied appellant's claim for compensation. The Office noted that the evidence of file was insufficient to establish that appellant experienced the claimed employment factors at the time, place and in the manner alleged because she failed to describe any specific incidents that caused the claimed condition.

Appellant requested an oral hearing and alleged, in a personal statement, that Ms. Durante "admonished" her unfairly on August 11, 2000. She claimed that, on that day, Ms. Durante walked by her and yelled: "you either work or go home!" Appellant stated that she had been continuously working all day. She alleged that Ms. Durante called her into a separate room where she "continued in the same manner" and acted like she was the "principal" and appellant was the "bad school girl." Appellant stated that she was very upset and started to cry. She claimed that Ms. Durante treated her in this manner because of her race and ethnic origin, because appellant is white and "foreign-born" and Ms. Durante is black and "American-born."

Appellant alleged that Ms. Durante acted similarly towards two other employees in the agency who were nonblack and were not born in the United States. She claimed that two coworkers, MiSon Wojnarowski and Delicia Quezada, witnessed the August 11, 2000 incident.

Appellant stated that she did not come to work for several days after the incident on August 11, 2000 and when she returned to work, Ms. Durante called her into a separate room and terminated her employment in “an abusive manner.” She stated that she became upset and developed chest pain over the next few days.

At the oral hearing held on October 23, 2001, appellant reiterated that Ms. Durante was “nasty” and “abusive” towards appellant and two other employees because they were nonblack and was very polite towards black employees. She also alleged that she was terminated two weeks early even though she was a temporary employee, because of the incidents with Ms. Durante on August 11, 2000.

By decision dated January 24, 2002, the Office hearing representative affirmed the February 14, 2001 decision on the grounds that the evidence of record failed to establish that appellant sustained an emotional injury in the performance of duty as alleged.

The Board finds that appellant has failed to submit the necessary factual information to establish that she sustained an emotional condition due to factors of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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. To establish appellant’s occupational disease 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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Vaile F. Walders*, 46 ECAB 822 (1995).

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 to 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 the employment, the disability comes within the coverage of the Act.⁵ Also, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.⁶

The initial question is whether appellant has substantiated compensable factors of employment as contributing to her emotional condition;⁷ if appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁸

In this case, appellant alleged that her supervisor, Ms. Durante, was abusive towards her on August 11, 2000. She claimed that Ms. Durante yelled: "you either work or go home!" and that the statement was heard by two witnesses. She claimed that, after Ms. Durante yelled at her, she took her into a separate room and continued to act abusively towards her and treat her like a "bad school girl." Appellant also alleged that Ms. Durante discriminated against her because she was not black and was not born in the United States. She alleged that Ms. Durante also behaved this way towards other nonblack employees. Lastly, appellant alleged that she was terminated prematurely. As a result of these incidents, appellant claimed that she developed depression, shortness of breath and chest pain.

The Board has reviewed the evidence and finds that it is insufficient to establish any compensable factors of employment in the performance of appellant's duties. With respect to her claim that Ms. Durante yelled at her on August 11, 2000 to start working or go home, there is no evidence in the record to substantiate that Ms. Durante actually yelled at appellant on August 11, 2000. Appellant claimed that two employees witnessed Ms. Durante yelling at her, yet there are no witness statements in the record. Even if the incident occurred as alleged, there is no evidence of error or abuse. Not every statement uttered in the workplace will give rise to coverage.⁹ There is no evidence in the record to substantiate that the incident actually occurred or that Ms. Durante acted abusively towards appellant. Appellant also alleged that Ms. Durante took her into a separate room and continued to act abusively towards her. Appellant did not

⁵ *Mary Boylan*, 45 ECAB 338 (1994).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995).

⁷ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

⁸ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁹ *Mary A. Sisneros*, 46 ECAB 155 (1994).

specify exactly what happened in the room, she only stated that Ms. Durante “got in her face.” Without any specific allegations of abuse or mistreatment, it is difficult to establish that any abuse actually occurred. There are no witness statements in the record to substantiate that Ms. Durante took appellant into a separate room and yelled at her or “got in her face.” Appellant claimed that Ms. Durante took appellant into a separate room specifically to avoid being heard by other employees; however, there is no evidence to substantiate appellant’s allegation. Next, she alleged that she was terminated prematurely because of the incidents occurring on August 11, 2000 with Ms. Durante. Appellant acknowledged that she was a temporary employee but alleged that, if Ms. Durante had not terminated her on August 15, 2000, she would have remained employed for about two weeks. There is no evidence in the record to establish error or abuse regarding appellant’s termination. Appellant did not submit any evidence concerning her temporary employment status or indicating that she was supposed to be employed until a specific date. Appellant stated at the oral hearing: “the appointment was supposed to run out soon after that [the date she was terminated] but not necessarily on that day.” Appellant indicated that she spoke to another supervisor, Mr. Chestnut, about her termination, but that he did not state she had been terminated prematurely. She stated: “He basically tried to assure me that it [i]s not policy of the office what [Ms. Durante] doing and I do n[o]t know if he talked to her about it or not but he certainly didn’t say anything about the termination.” Appellant did not submit any evidence to support her allegation of premature termination.

Appellant also alleged that Ms. Durante discriminated against her because she was nonblack and was not born in the United States. The Board has held that mere perceptions of harassment or discrimination do not constitute compensable factors of employment and that there must be evidence that harassment or discrimination did in fact occur.¹⁰ In this case, the record does not contain any specific allegations of racial discrimination by Ms. Durante. The record also does not contain independent, corroborating evidence of any harassment or racial discrimination against appellant by Ms. Durante. Appellant’s own, unexplained, perceptions of harassment are not compensable under the Act.¹¹ As appellant did not submit any evidence to corroborate her allegations of racial discrimination by Ms. Durante, the Board cannot determine that discrimination did in fact occur.

Since appellant did not establish a compensable factor of employment in this case, it is unnecessary to address the medical evidence.¹²

Appellant did not establish that her alleged emotional condition was sustained in the performance of duty and the Office properly denied her claim.

¹⁰ *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

¹¹ *Sharon R. Bowman*, 45 ECAB 187 (1993).

¹² *Margaret S. Krzycki*, *supra* note 8.

The January 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 9, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member