

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSANNA LEON-GUERRERO and DEPARTMENT OF
TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION,
San Diego, CA

*Docket No. 03-739; Submitted on the Record;
Issued June 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On November 28, 2001 appellant, then a 57-year-old labor relations specialist, filed a notice of occupational disease, alleging that on or after December 9, 1998 she had depression, diabetes and Meniere's disease as a result of her federal employment duties. Appellant's position as a labor relations specialist involved working with National Air Traffic Control regarding employee grievances, discipline, arbitration and other labor and employment issues on behalf of the Federal Aviation Administration. The Office of Workers' Compensation Programs requested that appellant submit a detailed factual statement describing the employment-related factors that caused her condition and evidence to support her allegations.

Appellant submitted a personal statement alleging that the following factors contributed to her emotional condition: (1) she claimed that on December 9, 1998 during a telephone conversation with Los Angeles Airport Manager, Sherry Avery, Ms. Avery made threatening comments to her, warning her that, if she did not support the Air Traffic Division Manager and sign a "Memorandum of Understanding" with the National Air Traffic Controllers Union, she would become "enemy number one for the Air Traffic Division manager, Jon Clancy." Appellant claimed that she met with Mr. Clancy the following day regarding these comments and he told her that he was going to make sure that she no longer provided services to his organization; (2) she claimed that she was reassigned to a position January 1, 1999, which involved only two small unions and had little work, causing her humiliation and suffering. Appellant claimed that she also worked at home and telecommuted for over 13 months and when she returned to work at the regional office in March 2000, her only duties included covering the leave of other employees. She also alleged that she requested a reassignment of duties several times but her supervisor, Nina Adams, refused, "blackballing" her professionally until her Equal Employment Opportunity (EEO) lawsuit was settled; (3) appellant alleged that her request to telecommute from home from May through September 2000 due to a family emergency was

denied by Ms. Adams in retaliation for her grievances and legal actions filed against the employing establishment; (4) she claimed that she was not chosen to attend a National Labor Relations Conference in Washington, DC during the week of September 21, 1999 because of her color, national origin, sex, age, handicap and diabetes. Appellant filed a complaint alleging discrimination; (5) she alleged that she was denied a promotion to a supervisory position (Assistant Personnel Officer) in October 2001 because of her national origin, sex and reprisal for filing prior EEO complaints. Appellant claimed that management gave preferential treatment to other nonminority coworkers and selected a white male with no labor relations background for the position. She filed a complaint alleging discrimination in not obtaining the promotion; (6) appellant alleged that her coworkers deliberately tried to sabotage her relationships with customers and clients; (7) she claimed that she was treated like a “deranged person” and that her employing establishment required her to see a psychiatrist; (8) appellant alleged that Glen Cardin, a logistics manager, requested that the regional manager relieve her of her authority to negotiate with unions on behalf of management without justification; (9) she claimed that she was denied a promotion after Ms. Adams stated on October 17, 2001 that her work assignment would not change until her EEO lawsuit was settled; and (10) appellant alleged that she was discriminated against based on her national origin, color, sex and reprisal for having filed prior EEO complaints.

Appellant submitted an October 19, 2000 report from Dr. David Borman indicating that he treated her during “the early 1980’s and in recent years”. He stated that she had been seriously affected by “cumulative psychic injuries” in the workplace but did not provide a diagnosis.

Appellant also submitted: (1) a statement from her colleague regarding her talk of committing suicide; (2) a letter to appellant that she was not selected for the Supervisory Personnel Management Specialist position; a letter regarding her agency’s request that she be transferred out of the Air Traffic Division (ATD); (3) a record of conversation between a manager and Dr. Stephen Goodman indicating that she was “counterproductive”; (4) a record of conversation between Ms. Adams and Dr. Goodman regarding appellant’s behavior; (5) a letter regarding her request to be promoted to a lead/senior/supervisory position; (6) a letter regarding her application for the Assistant Personnel Officer position; (7) a settlement letter between appellant and the Secretary of Transportation; (8) a letter from appellant’s manager Tim Kubik regarding her behavior; (9) a letter from Ms. Adams denying appellant’s allegations of discrimination; (10) a final EEO decision dated September 30, 1998 regarding various complaints of discrimination; and (11) a final EEO decision dated August 11, 2000 regarding the denial of the Assistant Personnel Officer position.

By decision dated January 25, 2002, the Office denied appellant’s claim.

The Board has reviewed the record and finds that appellant has not established 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.¹ 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.²

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 Federal Employees' Compensation Act.³

The initial question presented is whether appellant has alleged and substantiated compensable factors of employment as contributing to her emotional condition.

Appellant alleged several factors involving harassment and discrimination on the part of her supervisors or coworkers. For harassment to give rise to a compensable disability under the Act there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.⁴

With respect to appellant's allegation that Ms. Avery, a Los Angeles Airport manager, made threatening comments to her on December 9, 1998, appellant submitted no supporting evidence regarding this issue. She did not submit any evidence, such as a witness statement, to substantiate her allegation that Ms. Avery actually made these threatening comments to her on that day. Appellant also alleged that she was not chosen to attend the National Labor Relations Conference in Washington, DC in 1993 because of her color, national origin, sex, age, handicap and diabetes and filed an EEO claim alleging discrimination. In a decision dated September 30, 1998, the EEO Commission found "no discrimination" on the part of the employing establishment in denying appellant's request to attend the conference. The transcript of the decision indicated that appellant's supervisor decided, in consultation with the Office director, that two labor relations specialists needed to remain in the office to handle daily business and that appellant should be one of those employees because she and the other specialist had attended the conference previously. The employing establishment noted that, while

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

⁴ *Donna Faye Cardwell*, *supra* note 2.

appellant argued that she should give a briefing at the conference because she had worked with the employing establishment's chief spokesperson on a contract negotiation team, the employing establishment noted that the spokesperson was already attending the conference. The EEO decision did find that the employing establishment discriminated against appellant because it rarely assigned her to acting capacity as division manager and did not discuss contract interpretation with her, however, appellant did not allege these as factors contributing to her emotional condition.

Appellant also alleged that she did not receive a promotion to supervisory assistant personnel officer because of her national origin, sex and reprisal for having filed prior EEO complaints and claimed that management gave the position to a white male with no labor relations experience. She filed a complaint against the employing establishment alleging discrimination, yet in a decision dated August 11, 2000, the Department of Transportation found that there was no evidence of discrimination regarding this matter. The employing establishment noted that even though as a candidate, appellant had a "wealth of experience" especially in labor relations and labor law, she was not selected because she did not share the same philosophy on the broad roles and responsibilities of Human Resource professionals. Ms. Adams stated that she selected Mr. Kubik, a white male, for the management position, because he had demonstrated excellent managerial, leadership and communications skills and his experience was well rounded, which made him the best person for the job. She also noted that the two other "nonselectees" were white males. Appellant provided no evidence to suggest that she did not receive the promotion on the basis of her national origin, sex or reprisal against having filed prior EEO complaints.

Appellant also alleged that her coworkers tried to sabotage her relationships with customers, however, she did not provide an adequate description of these allegations or provide any supporting evidence that her coworkers were harassing her.⁵ Appellant's supervisor denied that she or any other employee took any deliberate actions to sabotage the relationships between appellant and her customers and the organizations that she serviced. Appellant claimed that she was treated like a "deranged person" and was required to see a psychiatrist, however, she did not describe exactly how she was treated like a "deranged person" nor did she submit any evidence to substantiate this allegation. The Board notes that the record contains a statement from appellant's coworker, John Fung, who indicated that during a meeting appellant made comments that she thought about committing suicide every day. Ms. Adams also claimed that on December 11, 2001 appellant told her that she "felt like she was going to have a nervous breakdown." Appellant submitted no evidence corroborating her allegation that she was treated like a "deranged person" by her coworkers or that she was required to see a psychiatrist by her employing establishment.

Finally, appellant alleged that she was discriminated against based on her national origin, color, sex and reprisal for having filed prior EEO complaints, however, she did not cite specific examples or submit any probative and reliable evidence to substantiate these general allegations. Without specific allegations and supporting evidence that she was discriminated against because

⁵ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

she filed previous EEO complaints, the Board finds that this is not a compensable factor of employment.

Appellant further alleged that several administrative or personnel matters contributed to her emotional condition. 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.⁶

First, appellant alleged that she was reassigned to a position on January 1, 1999, which had little work and that this caused her humiliation and suffering. She claimed that when she returned to work at the regional office in March 2000 she only covered the leave of other employees. She also alleged that she requested to be reassigned but that Ms. Adams refused, “blackballing” her professionally until her EEO lawsuit was resolved. In these instances, rather than alleging that the work itself contributed to her condition, appellant has attributed her emotional condition to administrative actions and harassment by her supervisor. However, appellant has not submitted any evidence indicating that Ms. Adams erred or acted abusively in reassigning her to a position or denying her requests to be reassigned. The Board also notes that Ms. Adams indicated in an April 16, 2001 letter, that she considered the team’s proposal to change work assignments and decided not to approve the request because it was in the best interest of the division to continue to have all four labor relations specialists involved in union-related matters.

Appellant also alleged that her request to telecommute from home from May through September 2000 due to a family emergency was denied by Ms. Adams in retaliation for her grievances and legal actions filed against the employing establishment. However, appellant has submitted no evidence regarding the denial of her request to telecommute or any evidence suggesting that the employing establishment erred or acted abusively in denying her request.

In reference to appellant’s allegation that a logistics manager, Mr. Cardin, requested that the regional manager relieve appellant of her authority to negotiate with unions on behalf of management without justification, the Board finds that this allegation is also unsubstantiated, as appellant submitted no evidence regarding this issue. The Board also notes that the regional manager took no action regarding the recommendation.

Appellant also claimed that she was denied a promotion after Ms. Adams told her on October 17, 2001 that her work assignment would not change until her lawsuit was resolved. However, appellant submitted no evidence indicating that Ms. Adams erred or acted abusively in her administrative capacity in denying appellant’s promotion or a change in her work assignment. Ms. Adams conceded that she told appellant she was “hesitant” and “apprehensive” to continue making changes to appellant’s work assignments because appellant had filed a claim against her when she changed appellant’s work assignment on January 1, 1999. Ms. Adams’ statements showed no evidence of error or abuse.

As appellant has not submitted probative and reliable evidence to substantiate her allegations of harassment and discrimination by her supervisors and coworkers, or evidence

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

indicating that her employing establishment erred or acted abusively in its administrative capacity, the Board finds that appellant had not established a compensable factor of employment. Since appellant has not established a compensable factor of employment the Board will not address the medical evidence.⁷ The Board finds that appellant did not meet her burden of proof in this case and the Office properly denied her claim.

The January 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 20, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992) (noting that, if appellant fails to substantiate with probative and reliable evidence a compensable factor of employment, the medical evidence need not be discussed).