

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE D. BREWSTER and DEPARTMENT OF THE ARMY,
INSTALLATION SAFETY OFFICE, Fort Lee, NJ

*Docket No. 02-1907; Submitted on the Record
Issued March 17, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On March 20, 2001 appellant, then a 49-year-old workers' compensation specialist, filed an occupational disease claim alleging a stress reaction and depression caused by overwork. Appellant stated that she became aware that her condition was caused by work on January 18, 2001 and returned to light duty, handling only workers' compensation cases, on February 26, 2001.

Appellant submitted a chronological list of her work duties and positions, noting that she was promoted from secretary to program liaison in January 2000 and took on added responsibility as alternate timekeeper in July 2000 and alternate mail orderly in September 2000. She alleged that, at a staff meeting on January 18, 2001, she was criticized for requesting overtime to help alleviate her workload and ran out of the meeting crying. She stated that she worked 24.5 hours over the weekend of January 27 to 28, 2001 and was taken off work on February 2, 2001 by Dr. Jeanne F. Decker, a licensed clinical psychologist, who indicated that appellant was emotionally overwhelmed by her employment duties.

In a narrative statement, appellant described her assigned tasks and duties and detailed her frustrations that resulted from having too much work to accomplish successfully. She felt "overwhelmed" and "pressured" by the need to provide a comprehensive workers' compensation program for injured employees and by the requirement that long-term injured workers be returned to duty. Appellant stated that she was depressed because she was unable to perform all the duties she was assigned and felt guilty because she had let her supervisor and coworkers down.

On June 20, 2001 the Office of Workers' Compensation Programs asked appellant to provide further information about performing the duties of two positions. Appellant responded with copies of her job descriptions as secretary and administrative assistant to two divisions, the form that transferred her from the former to the latter in February 1998 and a memorandum assigning her as program administrator.

On June 26, 2002 the Office denied appellant's claim for compensation on the grounds that she had failed to establish a compensable work factor. The Office noted that the various factors alleged by appellant to have caused her stress and depression -- administrative duties, meetings, job transfers and special projects -- were not covered under the Federal Employees' Compensation Act absent evidence of error or abuse on the part of the employing establishment.¹ The Office added that the medical evidence from Dr. Decker, failed to address whether appellant's diagnosed depression was caused by employment factors.

The Board finds that this case is not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.² There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Act. These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.³

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying and establishing 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

The Board has held that a claimant's allegations alone may be insufficient to establish compensable work factors without probative and reliable evidence substantiating the allegations.⁵ The claimant must substantiate such allegations by submitting a detailed

¹ A June 12, 2002 letter from appellant requests a reconsideration, noting that her claim had been approved for recurring depressive psychosis and all medical and travel expenses had been paid, but that her wage-loss compensation had been denied. The record on appeal contains no Office approval of appellant's claim. The Office's payment of medical and travel expenses for an alleged condition or injury on November 26, 2001 does not establish acceptance of a claim as work related.

² *Samuel Senkow*, 50 ECAB 370, 373 (1999).

³ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

⁴ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

⁵ *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

description of specific employment factors or incidents that she believes caused or adversely affected her condition.⁶ Personal perceptions and feelings alone are not compensable under the Act.⁷

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.⁸ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁹

In *Lillian Cutler*,¹⁰ the Board explained how an employee's emotional reaction to his or her regular or specially assigned work duties is covered under the Act. An employee who experiences emotional distress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties, is covered under the Act if the medical evidence establishes that the claimed disability resulted from his emotional reaction to such a situation. The resulting disability is generally regarded as due to an injury arising out of and in the course of the employment. This is true where the employee's disability resulted from his emotional reaction to his day-to-day duties. The same result is reached where the disability arose from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work.¹¹

In this case, appellant alleged that her assigned duties were overwhelming and that she was frustrated by her inability to complete all her assigned tasks. Appellant's supervisor reported that the eight specialists in her office all had backlogs and that appellant asked to work over the weekend of January 27 and 28, 2001, to catch-up because she had been absent for three days the previous week.

The supervisor stated that employees at a staff meeting on January 18, 2001 had discussed how to relieve stress because there was a lot of work to be done and not enough time to do it. Some employees felt that working compensatory time¹² was not the answer and that even working 24 hours a day they would never catch up. Appellant was upset, left the meeting and did not return to work that day.

⁶ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

⁷ *Robert W. Johns*, 51 ECAB 137, 141 (1999).

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

⁹ *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

¹⁰ *Lillian Cutler* 28 ECAB 125 (1976).

¹¹ *Id.* at 130.

¹² Federal employees may accumulate up to 24 hours of compensatory time, which is not paid, but which may be taken as leave in pay periods subsequent to the one in which it is earned.

The supervisor related that, in September 1998, another employee took over appellant's administrative duties, but the new employee's learning curve was slow and she needed help which appellant provided. The supervisor added that appellant worked 91 compensatory hours in 1999 and worked different hours in 2000, to make up for leave she had taken. The supervisor concluded that appellant had been told many times that she was doing a good job and that she was not responsible for work that could not be accomplished.

Appellant alleged that she was overworked and her supervisor corroborated that the office generally had a backlog and that appellant had extra work duties assigned to her. The Board finds that the evidence of record establishes a compensable factor of employment, overwork.

Appellant has established overwork as a compensable factor of employment. Appellant has also submitted medical evidence from Dr. Decker which indicates that appellant was diagnosed with depression; that she was emotionally overwhelmed by her job duties; and that she could not return to her regular work duties. As appellant has established a compensable factor of her employment, the Office must base its decision on an analysis of the medical evidence.¹³ Since the Office found there were no compensable factors of employment, it did not analyze or develop the medical evidence. The case will be remanded for that purpose. After such development as the Office deems necessary, it should issue an appropriate decision.

The June 26, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
March 17, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹³ See *Lorraine E. Schroeder*, 44 ECAB 323 (1992).