

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE ANN HURSEY and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Washington, DC

*Docket No. 03-1590; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On January 8, 2001 appellant, a 35-year-old secretary, filed a claim alleging that her post-traumatic stress syndrome was aggravated by her employment. Appellant identified January 1, 1997 as the date she first became aware of her employment-related emotional condition. She resigned from her secretarial position with the employing establishment effective November 7, 1998.

In a narrative report, appellant alleged that she experienced discrimination as a black female through withholding of promotions, sexual harassment and emotional distress. She noted that in 1997, while working for a white female supervisor in another agency, she was harassed to the point where she was prescribed anti-depression medication and took a leave of absence.

In a narrative dated December 9, 2002, appellant alleged that she experienced discrimination at work. In March 1998, she was denied advanced sick leave to attend her father's funeral. The employing establishment's Equal Employment Opportunity's (EEO) Office intervened as a result of a complaint that appellant filed and the matter went to mediation. Appellant alleged that after she returned from her father's funeral, she was harassed by her supervisor, Dawna Vicars on a regular basis, citing instances of checking her telephone calls, standing over her while appellant worked and faulting the appearance of an office calendar. Appellant filed another EEO complaint, which was resolved when appellant agreed to withdraw all charges and accept a temporary assignment. Appellant alleged that she worked well in the temporary position for eight months but was not selected for the permanent position. She alleged a pregnant white woman was selected over her and she was required to return to work under her former supervisor. She took leave without pay and subsequently resigned from the federal government effective November 7, 1998. She noted that she contracted post-traumatic stress

syndrome as a result of her military tour in the near east during the Persian Gulf War but that she was not placed on medication until her exposure to civilian harassment.

The record includes an employing establishment's form indicating that appellant was eligible but not selected for the secretarial position, to which she had been assigned temporarily.

In a report dated April 28, 1998, Dr. Raul Cuervo-Rubio stated that appellant had been diagnosed with post-traumatic stress syndrome a result of combat experience in the Gulf War in 1990. Dr. Cuervo-Rubio noted that she had been in an outpatient treatment program for her condition since 1997, but that recent stress has increased her symptomology. The physician requested that appellant be granted two weeks sick leave. He noted that she would be reevaluated after two weeks and that hopefully she would be able to return to her usual duties.

In a report dated January 14, 1999, Dr. Brian Crowley, appellant's psychiatrist, stated that she had an adjustment disorder and noted her combat experience, which caused post-traumatic stress syndrome. Dr. Crowley stated that appellant was under the medical care of the Veterans' Administration and had been taking Prozac since September 1998.

In a decision dated March 5, 2003, the Office denied the claim on the grounds that appellant failed to provide sufficient evidence to establish that factors of federal employment caused or contributed to her condition.

By letter dated March 13, 2003, appellant requested reconsideration and submitted a copy of a May 11, 1998 resolution agreement with the employing establishment which was based on her allegation of a hostile work environment. The settlement provided that appellant agreed to withdraw her allegations and that she be transferred to a temporary position. If appellant were not to be selected permanently for that position, she agreed to return to her prior job. The agreement noted it was reached without a final judgment as to the merits of the complaint. Appellant also submitted postsurgical reports concerning treatment of left carpal tunnel syndrome.

In a decision dated May 6, 2003, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that she sustained an emotional condition arising from the performance of duty.

To establish her claim that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.¹ Unless a claimant

¹ *Fred Faber*, 52 ECAB 107 (2000).

establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to her regular or specially assigned-work duties or a requirement imposed by the employment, the disability is deemed compensable. Perceptions and feelings are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations along with probative and reliable evidence.³

As a general rule, a claimant's reaction to administrative matters or personnel matters falls outside the scope of the Act.⁴ However, to the extent the evidence establishes that the employing establishment erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

Appellant has attributed her emotional condition to the fact that she was denied advance sick leave for her father's funeral. Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee.⁶ The record notes that a resolution agreement was entered on appellant's allegations, without final judgment on the merits of her complaint and no admission of wrong doing or discrimination. Based on this evidence, the Board finds that appellant has not substantiated her allegation that the employing establishment failed to accommodate her request for advanced sick leave to attend her father's funeral. This does not constitute a compensable factor of employment.

Appellant further alleged she was denied a promotion. An employee's frustration from not being permitted to work in a particular environment or hold a particular position is not compensable.⁷ In this case, however, there is no evidence indicating that appellant's employing establishment acted wrongfully or abusively by not selecting her for the position. The employing establishment found that she was eligible for the position but did not select her. Appellant did not submit any evidence showing that the employing establishment improperly failed to select her for a promotion.

Appellant alleged that she was harassed by her supervisor, who scrutinized her work, stood over her, monitored telephone calls and embarrassed her in front of her coworkers. For

² *Barbara J. Latham*, 53 ECAB ____ (Docket No. 99-517, issued January 31, 2002).

³ *Katherine A. Berg*, 54 ECAB ____ (Docket No. 02-2096, issued December 23, 2002).

⁴ *Ana D. Pizarro*, 54 ECAB ____ (Docket No. 02-1036, issued February 27, 2003).

⁵ *Id.*

⁶ *Jamel A. White*, 54 ECAB ____ (Docket No. 02-1559, issued December 10, 2002).

⁷ *Katherine A. Berg*, *supra* note 3.

harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable.⁸ The allegations of harassment must be substantiated by reliable and probative evidence.⁹ In the instant case, she presented insufficient factual evidence to support her allegations of abuse. Appellant's allegations are general in nature and not sufficiently detailed or supported by witness statements to substantiate the allegations as factual.

Appellant further alleged that her supervisor gave her unreasonable deadlines. An employee's complaints concerning the manner, in which a supervisor performs her duties as a supervisor or the manner in which a supervisor exercises her supervisory discretion, as a rule, is outside the scope of coverage provided by the Act.¹⁰ This principle recognizes that a supervisor or manager in general must be allowed to perform her duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹¹ In this case, appellant has not submitted evidence of error or abuse sufficient to establish that her supervisor acted unreasonably in discharging her duties.

The Board finds that appellant has not established a compensable employment factor under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹²

The Board further finds that the Office properly denied appellant's request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹³ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

⁸ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

⁹ *See Jamel A. White*, *supra* note 6.

¹⁰ *See Marguerite J. Toland*, 52 ECAB 294 (2001).

¹¹ *Id.*

¹² *See Barbara J. Latham*, *supra* note 2.

¹³ 20 C.F.R. § 10.606(b)(2) (1999).

¹⁴ 20 C.F.R. § 10.608(b) (1999).

Appellant's March 13, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law in its March 5, 2003 decision. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any new medical evidence with her March 13, 2003 request for reconsideration. While appellant submitted orthopedic reports concerning her carpal tunnel syndrome, these reports do not address the causal relationship between her emotional condition and her employment. The evidence concerning the employing establishment's EEO settlement was previously submitted and had been considered by the Office. As such the evidence is duplicative and irrelevant to that considered by the Office. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b) (2).

The decisions of the Office of Workers' Compensation Programs dated May 6 and March 5, 2003 are hereby affirmed.

Dated, Washington, DC
September 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member