United States Department of Labor
Employees' Compensation Appeals Board

KAREN A. ROULETTE, Appellant	)	
and	)	**Docket No. 04-1007**
	)	**Issued: August 17, 2004**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Denver, CO, Employer	)	

Appearances:
Karen A. Roulette, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed a timely appeal from the January 29, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's January 29, 2004 decision.

ISSUE

The issue is whether appellant sustained a major depression in the performance of duty.

FACTUAL HISTORY

On May 30, 2003 appellant, then a 40-year-old medical management claims examiner, filed a claim alleging that her stress was a result of her federal employment: "Delinquent and problematic workload assignment in greater numbers than any other GS-12 in the office.

Multiple management personnel giving me simultaneous direct orders and deadlines, and other." She indicated that she first became aware of her disease or illness on December 3, 2002.[1]

In a narrative statement, appellant explained: "On December 3, 2002 I was reassigned to work under my current supervisor, [Thomas O'Melia, Jr.,] and the work that had been previously assigned to a terminated employee (for approximately a year and a half) was reassigned to me. It was the most neglected and problematic caseload in the office (outside of the periodic roll cases); and management has been psycho-badgering me ever since [reference omitted]." Appellant stated that there were times around holidays, such as on May 23, 2003, that she was the only claims examiner at work. She identified the following as additional employment factors that led to the filing of her claim for compensation: (1) "Repeated, futile stressful interactions with the Department concerning confrontations with management. Continuing friction and strain with management and other individuals regarding performance of my duties, criticism of myself, and my technical skills." (2) "Management specially assigned me to perform my duties above and beyond the program goals and the performance plan, and outside of the program regulations; continuously demanding in excess to my own detriment and that of the program." (3) "My workload is in excess of that normally assigned to others in the office." Appellant also described the specific events that caused her disability:

> "On the May 29, [2003] and on May 30, 2003 I was trying to complete the priority assignment passed down directly to me from the District Director [Shirley A. Bridge] to be completed on that date. Then I would have moved on to the things that my first line supervisor had assigned for me to complete on that date. As it were, I still had my regular duty assignment of work to do; and at least three outstanding items (already overdue) to try to get resolved for Communications Specialist, John [L.] Sullivan. I had written several letters to an Attorney during the month of May to inform him that my assignments would not allow for me to meet with him during that month because the plate was full; and although the work unit I am assigned to already receives the highest volume of mail, this particular week an increase in volume was expected, as indicated by the May 27, 2003 email.
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> "Ms. [Kim C.] Macklin was not in my direct line of supervision or chain of command, and she had not been appointed to act in Tom's stead as evident by his e-mail dated May 20, 2003. She was giving me a direct order to take actions on case number 122010712, a 24 page 9 documents file (as of May 23, 2003). There was no urgent issue that had to be resolved on that date.
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> "This situation caused me stress overload causing me impaired function because I fell into a state of confusion. The conflicting assignment of work was a blur. I did not know if Ms. Macklin expected me to do what she said before doing what the District Director had assigned me to do, or to do what my own first line supervisor told me to do following what the District Director had given, and then do what Kim wanted; and then what about my daily assignment or what

[1] Appellant filed a claim for compensation alleging a traumatic injury on May 30, 2003. The Office determined this to be a duplicate claim.

> Mr. Sullivan had given me to do? It caused me a sense of great confusion and I was not sure but I did know that I could not accomplish all the assignments all at once or even accomplish all of what was being asked of me in one day. By that time I was perplexed and I just could not even think straight. I was sickened by the whole situation. So I filed a stress claim and signed out sick.
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> "And because I requested a form CA-16 Authorization for Treatment based on 20 CFR Sec. 10.300(a) Revision April 1, 2003, and 20 CFR Sec. 10.302 Revision April 1, 2003; and my employer denied the request I feel this further advanced a distressed state of being for me because I believe they have every intention of challenging my claim." (References omitted.)

On June 18, 2003 Dr. Randolph W. Pock, a Board-certified psychiatrist, reported that it was his opinion appellant was suffering from major depression, single episode, which left her unable to work since May 30, 2003. He noted that appellant's symptoms included, among other things, "feeling overwhelmed, following and resulting from events at her job." Dr. Pock prescribed antidepressant medication.[2]

On June 30, 2003 Mr. O'Melia, claims manager, responded to appellant's claim. He stated that appellant's caseload was no more problematic than any other caseload in the medical management component. He attached copies of caseload assignment memoranda for December 2002 and spreadsheets showing the distribution of cases by status and workload data for appellant and other medical management claims examiners in December 2002 and May 2003. Mr. O'Melia explained that appellant inherited a caseload when she was reassigned to the medical management unit on December 3, 2002. He noted that certain claims examiners had difficulty or problems managing their caseloads and that other claims examiners, reassigned to these caseloads, had effectively and successfully managed them. He confirmed that appellant received a priority assignment to review pending call-ups by May 30, 2003; that she was scheduled to perform backup on May 30, 2003 for a claims examiner who was on leave at that time; and that Ms. Macklin had directed appellant to address the current case management actions in a particular claim by the close of business on May 30, 2003. On the issue of stress, Mr. O'Melia stated: "The unit deals with a high volume of cases that require primarily simple actions in comparison to other units. If an examiner is more methodical, or has perfectionist tendencies in work methods and processes, or has less procedural knowledge than most examiners, then perhaps the job could be perceived as stressful."

On August 6, 2003 Mr. O'Melia further commented on appellant's allegations. He explained that appellant had never been the only examiner on duty for any day. Mr. O'Melia noted specifically that on May 23, 2003 there were 12 other claims examiners on duty for most or all of the core hours that day and that all of the six examiners assigned to the medical management component, including appellant, were on duty all or part of the day. Mr. O'Melia stated that appellant had never, to his knowledge, been assigned duties above and beyond program goals or outside regulations. He noted that attachments to appellant's statement documented routine instructions and guidance similar to that provided to all examiners on

[2] On September 17, 2003 Dr. Pock stated: "Regarding the approximate date the condition commenced, all available information would indicate to me that the condition commenced May 30, 2003, due to her work situation."

occasion. He again stated that appellant's workload was not in excess of that assigned to other examiners based on his regular observation of other examiners' case-related issues. Mr. O'Melia explained that a Form CA-16 authorization for medical treatment was not appropriate in appellant's case, as she had filed an occupational disease claim and as circumstances did not warrant issuing such authorization.

On August 6, 2003 Ms. Bridge, district director, responded to appellant's claim. She noted that appellant's caseload in the adjudication unit had become very delinquent: time frames were not being met, and cases were not being properly or timely developed. Ms. Bridge stated that when appellant returned to the medical management, the caseload she inherited was about the same as the other caseloads in the unit. She remarked that Grade 9 examiners were successfully handling their caseloads, and that since appellant stopped work other examiners had cleaned up the backlog she created while continuing to do their own casework. Ms. Bridge noted that an Equal Employment Opportunity (EEO) complaint appellant filed in approximately September 2001 was recently dismissed on appeal and that two other complaints were pending. She confirmed that she had given appellant a priority assignment in April 2003 to clear her pending call-ups by May 30, 2003. She stated that appellant had done very little, if any, of this assignment by May 23, 2003. Ms. Bridge stated that she knew of no continued friction between appellant and management. She commented that the e-mails appellant submitted in support of her claim were just routine communication between her and her supervisors. Ms. Bridge stated that Ms. Macklin was a supervisor and had authority to give direct orders to any employee in the office, including appellant, and that appellant was previously advised of this. As for appellant's allegation that she was confused about her pending assignments, Ms. Bridge stated: "She had [6] weeks to complete my assignment, [3] days to complete John Sullivan's assignments, [24] hours to complete Kim's 15-minute assignment, all week to complete Tom O'Melia's assignment, and [3] days to complete OASIS mail. This is normal activity for any GS-12 claims examiner in our office and is just routine claims work."

In a decision dated August 21, 2003, the Office denied appellant's claim for compensation. Noting that appellant was diagnosed with major depression related to her employment, the Office found that the factual and medical evidence received was sufficient to establish fact of injury; however, none of the specific events that appellant identified occurred in the performance of duty.

Appellant requested a review of the written record by an Office hearing representative. She stated, among other things: "I filed a stress claim on May 30, 2003 based on conflicting work assignments from five different managers who may be within their right to give one person simultaneous direct orders, but it was not humanly possible, nor a reasonable expectation that I could discern priority nor meet the demand, and that caused me stress." She argued that it was erroneous for Ms. Macklin to direct her to deny or accept a certain case by the close of business on May 30, 2003 because it was a 24-page, 9-document file, there were no urgent issues to be resolved and the claimant was not demanding urgent attention to her case. Appellant concluded that Ms. Macklin was being abusive and insensible about the matter.

In a decision dated January 29, 2004, the Office hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that appellant had established no compensable factors of employment. The hearing representative found that

she had presented no evidence to establish that the employing establishment erred or acted abusively and that she had presented no evidence to corroborate that she was in fact harassed or discriminated against.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration. "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[5]

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[6] An employee's emotional reaction to an administrative or personnel matter is generally not covered by workers' compensation. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[7] As a rule, however, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] In *Kathleen D. Walker*,[9] the employee attributed her emotional disability, in part, to disputes with coworkers. The Board noted that, while established disputes arising from the performance of one's duties could give rise to coverage under the Act, the claimant's unfounded perceptions could not constitute a compensable factor of employment. Mere perceptions and feelings of harassment or

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[6] *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 42 ECAB 566 (1991), *reaff'd on recon., Thomas D. McEuen*, 41 ECAB 387 (1990).

[8] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[9] 42 ECAB 603, 608 (1991).

discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[10]

The Board has underscored that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress from "harassment" or a difficult working relationship. The claimant for compensation must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[11]

With regard to emotional claims arising under the Act, the term "harassment" as applied by the Board must not be viewed as the equivalent of "harassment" as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace.[12] Rather, in evaluating claims for workers' compensation under the Act, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or workers.[13]

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[10] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[11] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[12] The Act is remedial in character and the Office has the duty of administering the provisions of the Act with regard to the rights of employees and the intent of Congress. *John J. Feeley*, 8 ECAB 576 (1956). The determination of an employee's rights or remedies under other statutory authority does not establish entitlement to benefits under the Act for disability. Under the Act, for a disability determination, the employee's injury must be shown to be causally related to an accepted injury or factors of employment. For this reason, the determinations of other administrative agencies or courts, while instructive, are not determinative with regard to disability under the Act. *See Daniel Deparini*, 44 ECAB 657 (1993); *George A. Johnson*, 43 ECAB 712 (1992); *Constance G. Mills*, 40 ECAB 317 (1988); *Fabian W. Fraser*, 9 ECAB 367 (1957). Findings made by the Merit Systems Protection Board or EEO Commission may constitute substantial evidence relative to the claim to be considered by the Office and the Board. *See Donna Faye Cardwell*, *supra* note 10; *Walter Asberry, Jr.*, 36 ECAB 686 (1985).

[13] The proper forum for allegations of sexual harassment, discrimination or a hostile work environment are outside the Act. Such instances may give rise to coverage under the Act, however, when established by the facts in evidence. *See Abe E. Scott*, 45 ECAB 164 (1993).

ANALYSIS

The record shows that appellant attributed her major depression, for the most part, to the actions of her supervisors. As a general rule, any depression she developed as a result of these actions lays outside the scope of workers' compensation. Error or abuse by her supervisors would establish an exception to the general rule, but in this case the evidence does not substantiate appellant's allegations.

The evidence does not show that appellant was given delinquent and problematic workload assignments in greater numbers than any other GS-12 in the office or that her workload was in excess of that normally assigned to others in the office. The evidence does not show that she inherited the most neglected and problematic caseload in the office, outside of the periodic roll cases, nor does the evidence show that management "psycho-badgered" her ever since. The employing establishment countered that appellant's caseload was no more problematic than any other caseload in the medical management component, that the caseload she inherited was about the same as the other caseloads in the unit. The employing establishment rebutted appellant's allegation that she was at times, around holidays and on May 23, 2003, the only claims examiner at work. Appellant alleged that management specially assigned her to perform duties above and beyond the program goals and the performance plan and outside of the program regulations, continuously demanding in excess to her detriment and that of the program, but the employing establish again rebutted this allegation. In the absence of documented error or abuse, any friction or strain appellant felt with management regarding the evaluation of her performance or the implementation of discipline is not compensable. Appellant submitted no favorable final decision or finding from her grievances or EEO complaints, and she has not shown that harassment or retaliation did in fact occur. She has not shown that the employing establishment violated regulations by not issuing a Form CA-16 authorization for medical treatment. While appellant firmly believes that her supervisors committed error or abuse in these matters, she has not met her burden of proof to establish a factual basis for her allegations. To this extent, the Office's analysis of appellant's claim is correct.

The nature of appellant's claim, however, is broader than the Office characterized. She also attributed her major depression to the pressure of having to meet multiple deadlines at the end of May 2003. Appellant had her regular assignment of work. In addition to this, the district director, Ms. Bridge, gave her a priority assignment to review pending call-ups by May 30, 2003. She was also scheduled to perform backup on May 30, 2003 for a claims examiner who was on leave at that time. A supervisor, Ms. Macklin, directed appellant to address the current case management actions in a particular claim by the close of business on May 30, 2003. Appellant had at least three outstanding items, already overdue, to try to resolve for the communications specialist, Mr. Sullivan. Claims examiners were also warned to expect larger than normal volumes of central mail on May 27, 2003. It does not matter that appellant had, as Ms. Bridge put it, "six weeks to complete my assignment, three days to complete John Sullivan's assignments, 24 hours to complete Kim's 15-minute assignment, all week to complete Tom O'Melia's assignment, and three days to complete OASIS mail." It does not matter that this was

"normal activity" for any GS-12 claims examiner or "just routine" claims work.[14] It does not matter that other examiners could effectively and successfully manage such caseloads. When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to her regular or specially assigned work or requirement imposed by the employing establishment or by the nature of her work.[15]

The evidence in this case, including statements from Mr. O'Melia and Ms. Bridge, establishes a factual basis for this aspect of appellant's claim.[16] The Board finds that she has established a compensable factor of employment. Further, she has made a *prima facie* claim for compensation by submitting medical opinion evidence supportive of her claim. The Board finds that the opinion of the attending psychiatrist, Dr. Pock, is generally supportive of appellant's claim but is of diminished probative value because he did not have the benefit of a statement of accepted facts, which would permit him to base his opinion on a proper factual background.[17] The Board will set aside the Office's January 29, 2004 decision denying compensation and remand the case for further development. The Office shall prepare a proper statement of accepted facts that sets forth in detail the factors of employment that are established as compensable, which a physician must consider in giving an opinion on causal relationship, and that sets forth the factors of employment that are either not established as factual or not found to be compensable, which a physician may not consider. The Office shall then obtain a well-reasoned medical opinion on whether the factors of employment established as compensable contributed in any way to appellant's diagnosed emotional condition. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

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

[14] The Act does not require a showing of unusual exertion or stress in the employment as a prerequisite for compensability. The claim is compensable if it is established that the performance of regular duties did in fact precipitate or cause the injury claimed. *John J. Gallagher*, 35 ECAB 1128 (1984).

[15] *Lillian Cutler*, *supra* note 6.

[16] In a May 29, 2003 e-mail, appellant indicated that she "cannot possibly meet the deadlines and demands of Shirley, Tom, John Sullivan, and Kim all at once."

[17] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2004 and August 21, 2003 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Issued: August 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member