United States Department of Labor
Employees' Compensation Appeals Board

CAROL J. BROSSART, Appellant	)	
and	)	**Docket No. 03-2094**
	)	**Issued: January 27, 2004**
DEPARTMENT OF THE INTERIOR, Denver, CO, Employer	)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 25, 2003 appellant filed a timely appeal of an August 5, 2003 decision of the Office of Workers' Compensation Programs which denied appellant's emotional condition claim on the merits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On June 18, 2001 appellant, then a 61-year-old systems accountant, filed an occupational disease claim alleging that she developed anxiety and stress at the employing establishment commencing December 5, 2000. She stated that she was detailed to a position in the royalty area in December 2000, where she was not trained properly or given support to perform her duties. Appellant alleged that she was denied leave from February 2001 to January 2002 and was required to work mandatory overtime to meet project deadlines. She indicated that she was berated in May 2001, for falling behind in her work and taking leave. Finally appellant alleged

that the building in which she worked was undergoing construction and this caused an unbearable work situation due to the noise, dust and a minimal ventilation system.

In a statement dated June 19, 2001, appellant's manager, Katherine Martinez, noted that appellant was no longer authorized to work overtime in compliance with her physician's restrictions. She advised that, effective July 1, 2001, appellant's work assignment was redirected to accounting services, which matched her background, skills and expertise and where the environment was less stressful and time frames and deadlines were less stringent. In a supervisory statement dated June 21, 2001, Ms. Martinez noted that upon appellant's request for assistance, two additional employees were assigned to the royalty team in April 2001, and a third was assigned in May 2001. She indicated that appellant's responsibilities were reduced, noting that appellant was no longer the designated team leader and was no longer required to execute test scripts on a daily basis, develop royalty edits, communicate them to the contractor or attend twice daily status meetings. Ms. Martinez related that appellant was permitted to work at home for a few days; however, her position was not conducive to telecommuting as her duties required her to be at the work site as a member of the test team. She noted that appellant was not authorized to work more than 45 hours a week and her general overtime was less than 10 hours per pay period. Ms. Martinez noted that appellant was the designated backup for the employee who was the royalty process system developer and had the background and experience in system design and development and testing to perform the job. She indicated that deadlines were established and monitored and any delay in meeting deadlines had the potential to negatively affect the contractor's ability to perform its contractual obligations, therefore, team leaders and managers ensured that team members were meeting their deadlines. Ms. Martinez indicated that she was unaware that the work site construction had a negative impact on appellant's ability to complete her deadlines or increased her stress until notified in June 2001. She noted that an alternate work space was available for employees concerned with the noise and fumes; however, appellant did not request an alternative workstation during the remodeling period. Ms. Martinez advised that appellant was transferred to the data conversion team effective July 2, 2001, which was less stressful and conducive to appellant's knowledge and experience.

In treatment records commencing October 20, 2000, Dr. Lisa M. Bassow-Scheve, a family practitioner, noted treating appellant since 1993 for reactive airways disease, allergic rhinitis, mild depression and gastroesophageal reflux disease. On September 15, 2000 she indicated that appellant was experiencing stress at work along with symptoms of carpal tunnel syndrome, a deviated septum and gastric discomfort. Dr. Bassaw-Scheve's March 5 to May 24, 2001 report noted that appellant was experiencing work stress and she was diagnosed insomnia, depression and menopause. In a report dated May 31, 2001, Dr. Bassow-Scheve advised that appellant developed high-blood pressure and insomnia as a result of increasing stress at work since December 2000, due to working overtime. On May 7, 2001 the physician prohibited further overtime and, on May 24, 2001, took appellant off of work for a two-week period. Dr. Bassow-Scheve advised that appellant's medical conditions worsened and that she did not expect any recovery in her current job situation.

Appellant also submitted treatment notes from Dr. Tracy M. Wolf, a family practitioner, dated December 16, 1998 to April 18, 2001. She treated appellant for right carpal tunnel

syndrome and flexor tenosynovitis. In a report dated February 20, 2001, Dr. Mark J. Conklin, a general practitioner, noted treating appellant for a right ankle tibial fracture and plantar fasciitis.

In a note dated May 14, 2002, Dr. Joseph H. Gibson, a clinical psychologist, related that he had treated appellant since 1981. He reported that, in June 2000, he treated appellant for work stress, anxiety and depression due to working excessive overtime and not being permitted to take leave. Dr. Gibson opined that appellant's anxiety and depression were directly related to the physical demands of excessive work hours and the emotional stress of dealing with insensitive management. He noted that appellant had improved since stopping work and advised that she was not ready to return to employment.

In a decision dated August 15, 2002, the Office denied appellant's claim on the grounds that the evidence of record submitted, failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

On September 13, 2002 appellant requested an oral hearing before an Office hearing representative, which was held on May 1, 2003. Appellant submitted a witness statement from a coworker, Lynette Schneider, dated January 29, 2002. She noted that appellant was forced to expand her responsibilities in the royalty processing system, with limited knowledge and support. Ms. Schneider assisted appellant; however, as the learning process was not fast enough for some managers and appellant was berated in front of colleagues for not being up to speed on her work and worked overtime to meet her job requirements. In a January 26, 2003 letter, Mary Johnson, a coworker, advised that she held the position of royalty processing system development prior to appellant. She believed that appellant did not have the appropriate knowledge to perform the position, but noted that she had no knowledge with respect to whether appellant had sufficient support for the job.

In a decision dated August 5, 2003, the hearing representative affirmed the August 15, 2002 decision.

LEGAL PRECEDENT

To establish 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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned

[1] *See Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[2] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[3]

ANALYSIS

Appellant alleged that she developed an emotional condition as a result of being detailed to a position where she was not properly trained or given adequate support to perform her duties. She alleged that she was denied leave from February 2001 to January 2002 and was required to work mandatory overtime to meet project deadlines. Appellant alleged that she was berated in May 2001, for falling behind in her work and taking leave and alleged that her work situation was unbearable due to building construction at her employment site.

Appellant's allegations that she was detailed to a position where she was not properly trained or given enough support to perform her duties may be compensable. The Board has held that an emotional reaction to a situation in which an employee is trying to meet her position requirements may be compensable.[4] Additionally, the Board has found that employment factors such as a heavy workload and the imposition of deadlines are covered under the Federal Employees' Compensation Act.[5]

The record shows that in September 2000, appellant was detailed to the royalty division in the position of a royalty process system developer, to replace an employee who had left the employing establishment. The detailed position involved tight deadlines to accomplish the required tasks. The record noted that the employing establishment permitted appellant to perform a limited amount of work at home, but then determined that her position required her to be in the office. She testified that she was performing two jobs as a royalty expert and a team leader to develop a new royalty system. Appellant further testified that she had deadlines almost everyday and conference sessions with the company that was the new designer of the royalty system, which entailed having to gather materials and answer questions for the next day session, in addition to maintaining the schedule for detailed scripts and test data. She also testified that in March 2001, she was redirected to another project which required, in addition to her regular duties, that she work with the industry software experts to set up their electronic transmissions to coincide with the royalty conversion. She stated that she fell behind in her duties and schedules and as a result experienced stress.

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

[3] *Ruthie M. Evans*, 41 ECAB 416 (1990).

[4] *See Ernest St. Pierre*, 51 ECAB 623 (2000).

[5] *Id.*

Statements from appellant's supervisor, Ms. Martinez, corroborate appellant's contentions, noting that deadlines were established and monitored and any delay in meeting deadlines had the potential to negatively affect the contractor's ability to perform its contractual obligations, therefore, team leaders and managers ensured that team members met their deadlines. She advised that appellant requested additional assistance in performing her duties and meeting deadlines and thereafter two additional employees were assigned to the royalty team in April 2001 and a third was assigned in May 2001. Ms. Martinez further advised that effective July 2, 2001, appellant's work assignment was redirected to accounting services where the environment was less stressful and time frames and deadlines were less stringent.

Additionally, appellant submitted a witness statement from Ms. Schneider, a coworker, who indicated that she attempted to assist appellant in the performance of her duties when she was assigned to develop and test the new royalty processing subsystem; however, the learning process was not fast enough for the managers and appellant was often berated, sometimes in meetings, for not being up to speed on everything. She indicated that rapid changes in the priority of projects were common and appellant was often told that priorities had changed from day to day and was criticized for not completing the first priority. Additionally, Ms. Schneider noted that overtime was requested to meet the heavy demands and appellant's stress level also increased.

The Board finds that the record provides evidence to support appellant's allegation that she encountered the pressures of trying to meet her regular and specially assigned duties in the detailed position. Thus, she has established a compensable employment factor under the Act.

Regarding appellant's allegation that she was denied leave from February 2001 to January 2002, the Board finds that this allegation relates to administrative or personnel matters.[6] Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[7] The Board finds that the evidence does not establish that the employing establishment either erred or acted abusively in addressing appellant's leave requests. She has not established a compensable employment factor under the Act with respect to the alleged leave denials.

Appellant's allegation that she was required to work mandatory overtime to meet project deadlines may be compensable.[8] The Board has held that overwork may be a compensable factor of employment.[9] Appellant testified that she experienced emotional distress due to overwork from required overtime assignments and indicated that, from September to December 2000 she

[6] As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

[7] *Id.*

[8] *See Robert Bartlett*, 51 ECAB 664 (2000); *Sandra F. Powell*, 45 ECAB 877 (1994); *Frank A. McDowell*, 44 ECAB 522 (1993); *William P. George*, 43 ECAB 1159 (1992).

[9] *Id.*

was working 4 to 5 hours per weekend, from January to February 2001, she worked 90 hours on weekends and 10-hour workdays from March to June 2001. She further testified that she received an email from her supervisor, Mike Miller, in February 2001, advising that there would be no more annual leave until after January 2002 and that overtime was mandatory, including weekend work. Appellant indicated that because of the aggressive schedule for system implementation, overtime was an everyday occurrence and if the design testing occurred on a Saturday or Sunday, she would be required to work and stay on-call 24 hours a day. She submitted evidence from a former supervisor, Ms. Martinez, who, in a letter dated June 19, 2001, advised that appellant was required to work overtime and that after June 2001 she was no longer authorized to work overtime in compliance with her physician's restrictions. Thus, appellant has established the compensable employment factor of overwork.

Appellant alleged that her supervisor harassed and berated her in May 2001, for falling behind in her work and for taking leave. To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[10] However, for harassment to give rise to a compensable disability under the Act there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[11] General allegations of harassment are insufficient.[12] In this case, appellant has not submitted sufficient evidence to establish that she was harassed by her supervisor.[13] Although she submitted a statement from a coworker, Ms. Schneider, dated January 29, 2002, which indicated that appellant was berated in front of colleagues, she provided no specific discussion of the alleged May 2001 incidents. The statement of Ms. Schneider is not specific as to appellant's allegations and the Board notes that vague allegations of a supervisor berating an employee are insufficient to establish a claim of harassment. A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.[14] Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also alleged that her work situation became unbearable due to building construction at her employment site. However, in a statement dated April 25, 2001, the employing establishment advised that an air quality analysis was performed which revealed that

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[10] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 1.

[11] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[12] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

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

[14] *See Michael A. Deas*, 53 ECAB ___ (Docket No. 00-1090, issued November 14, 2001) (while the Board has recognized the compensability of threats in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to compensability).

no harmful dust emissions had been detected in the area. The statement indicated that several precautions had been taken, including installing barriers and air intake filters to eliminate dust, isolating return zones to avoid contamination of inhabited areas and enclosing the demolition area to muffle noise emanating from the demolition. Furthermore, Ms. Martinez advised that an alternate work space was available for employees concerned with any noise or fumes; but appellant did not request an alternative workstation during the remodeling period. As noted above, an employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable under the Act.[15] Appellant has not established a compensable employment factor under the Act with respect to this allegation.

The Board finds that appellant has identified two compensable employment factors, the regular and specially assigned job requirements upon her detail to the royalty division and overwork. However, her burden of proof is not discharged by the fact that she has identified an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she had an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.[16]

Dr. Bassow-Scheve generally supported that appellant's emotional condition was due to the pressures of her job and the overtime required to perform her job duties. Her report of May 31, 2001 diagnosed hypertension, depression, insomnia, stress and anxiety and advised that appellant developed high-blood pressure and insomnia as a result of increasing stress at work since December 2000, due to working overtime hours. On May 7, 2001 Dr. Bassow-Scheve prohibited further overtime and on May 24, 2001 she ordered appellant off work completely for two weeks. She advised that appellant's medical conditions worsened and she did not expect any recovery in her current job situation. Dr. Bassow-Scheve, therefore, related appellant's emotional condition in part, to the long hours of work she performed and the deadlines she encountered in her employment. Additionally, Dr. Gibson submitted a report dated May 14, 2002, which reported that in June 2000, he treated appellant for work stress, anxiety and depression due to working excessive overtime and not being permitted to take leave. He opined that her anxiety and depression were directly related to the physical demands of excessive work hours and the emotional stress of dealing with insensitive management.

While the medical evidence thus far submitted by appellant is insufficiently rationalized to discharge her burden of proof, it constitutes sufficient evidence in support of her claim to require further development of the record by the Office.[17] The Board notes that there is no medical evidence of record negating causal relationship.

Appellant has established two compensable employment factors. The case will be remanded to the Office for further development. The Office should develop the medical record to determine whether the accepted employment factors aggravated or contributed to appellant's

[15] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[16] *Kathleen D. Walker*, *supra* note 1.

[17] *See John J. Carlone* 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

emotional condition and, if so, any period of disability resulting there from. After further development as it may find necessary, the Office should issue a *de novo* decision.

CONCLUSION

Under the circumstances described above, the Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member