

**United States Department of Labor
Employees' Compensation Appeals Board**

GAYLE R. AGOSTINONI, Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
AMBULATORY CARE CENTER,
Newport, RI, Employer**

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**Docket No. 04-707
Issued: July 26, 2004**

Appearances:
David Salzillo, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 21, 2004 appellant filed a timely appeal of the December 16, 2003 merit decision of the Office of Workers' Compensation Programs, which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional disability arising in the performance of duty causally related to factors of employment.

FACTUAL HISTORY

On March 30, 2001 appellant, then a 54-year-old registered nurse, filed an occupational disease claim alleging that she developed a major depressive episode and situational stress as a result of being overworked. She stopped work on January 12, 2001 and was later terminated from the employing establishment.

Appellant submitted a statement dated March 31, 2001, which indicated that on January 12, 2001 she was unfairly given a poor mid-term performance rating and was so distressed that she was unable to return to work. She also noted that commencing July 1, 2000 the staff was reduced from three registered nurses to herself. Appellant indicated that she requested temporary assistance from management, but this request was ignored. She further alleged that, due to understaffing, she was forced to attend to eight doctors in addition to performing her other office duties and this caused her to be overworked.

In a January 19, 2001 note, Dr. James D. Gloor, a Board-certified internist, indicated that appellant was being treated for a stress-related illness and was totally disabled from January 16 to 26, 2001. In an attending physician's report dated February 21, 2001, Dr. Gloor diagnosed agitated depression and situational stress and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by employment activity, noting that a change in her job description caused her stress. In other reports, dated February 7 to March 28, 2001, Dr. Bruce T. Letourneau, an osteopath, noted treating appellant for stress-related illness and depression which were due to a negative interim evaluation at work.

The employing establishment submitted a performance evaluation dated July 1, 1999, which noted that appellant passed all elements of her job description. A performance evaluation dated February 1, 2001, generally indicated that she needed to take a more active clinical role in the performance of her job duties. Also submitted was an email from Lieutenant Stephen W. Dolak, appellant's supervisor, dated March 14, 2001, requesting that appellant submit a request for leave or approved absence forms for the period February 27 to March 23, 2001 and a physician's statement to ensure continued leave without pay status. In a memorandum dated April 2, 2001, Captain Kristine J. Hanson, head of clinical operations and senior nurse executive, addressed appellant's request for reassignment and reasonable accommodation due to her inability to function in her position as a registered nurse and advised appellant of the regulations that must be followed in order to provide her with a reasonable accommodation assignment. The record indicates that Captain Hanson met with appellant and her family on March 19, 2001 and was advised that appellant would not return to her position as a registered nurse upon the advice of her physician; however, she would be interested in an administrative position. Attempts to correspond with appellant by mail on April 5, 2001 were unsuccessful. By letter dated June 19, 2001, the Office asked appellant to submit additional information including a detailed description of the employment factors or incidents which she believed had contributed to her claimed illness and a comprehensive medical report from her treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed emotional condition.

In an undated narrative statement, appellant noted that the employing establishment experienced a chronic problem of inadequate corps staff and that she was the only registered nurse for six to eight health care providers from late July to October 1, 2000. She stated that on August 2, 2000 she informed Lieutenant Hardesty of her workload concerns and requested temporary assistance and was refused help. Appellant further alleged that she was overwhelmed by the additional work which caused psychological strain and that her condition exploded on January 12, 2001 when she was given a poor performance evaluation.

Appellant submitted reports from Dr. Letourneau dated April 13 to July 18, 2001, who advised that appellant was being treated for a work-related mental illness. He indicated that appellant was resentful of having been made to work with inadequate help for months and was requesting reassignment. In his report dated July 4, 2001, Dr. Letourneau noted treating appellant since February 2, 2001 for a major depressive episode. He stated that appellant informed him that the precipitant for her emotional state was a stressful work condition due to a shortage of nursing staff and an unfavorable performance evaluation. Dr. Letourneau indicated that appellant refused to cooperate with the employing establishment and opined that appellant would be angry, depressed and anxious until she had punished the military financially. His report of July 17, 2001 noted that appellant's passive aggressive communication style precluded an amicable resolution of her work issues. Dr. Letourneau further opined that appellant's depression was directly and causally related to the degree of stress she incurred while working at the employing establishment. In an attending physician's report dated July 18, 2001, he diagnosed passive aggressive personality disorder and generalized anxiety disorder versus malingering. Dr. Letourneau indicated with a check mark "no" that appellant's condition was not caused or aggravated by her employment duties. The physician noted that he terminated care with appellant on July 18, 2001 because her pursuit of financial compensation interfered with his attempt to help her recover from her illness.

Also submitted was a witness statement from Melody E. McMath, a retired physician's assistant, dated June 28, 2001, who noted that appellant was the only nurse assisting eight health care providers beginning in June 2000. Appellant's daughter, Jennifer Hug, submitted a letter dated July 2, 2001 and noted that Lieutenants Dolak and Hardesty professionally sabotaged, abused and harassed her mother which caused her emotional illness.

The employing establishment submitted a statement from Captain Hanson dated October 12, 2001, who noted that the clinic in which appellant worked was staffed by several clerks and numerous enlisted corps staff. She stated that during the period of time appellant claimed to be overworked one nurse was on sick leave and one nurse was on extended leave. In a letter dated October 12, 2001, appellant's manager P.M. Culver noted that during the summer of 2000 the clinic was very busy and that one nurse was on sick leave. Also submitted was a notice of proposed removal dated October 22, 2001, which was issued due to appellant's continued absence from work since January 12, 2001.

In a decision dated November 2, 2001, the Office denied appellant's claim on the grounds that the evidence of record submitted failed to demonstrate a causal relationship between the events commencing around July 1, 2000 and the claimed emotional condition which caused disability after January 12, 2001. The Office accepted as compensable the employment factor that appellant's office was understaffed and that she had an increased workload, but determined that appellant did not submit sufficient rationalized medical evidence establishing that the identified compensable employment factor caused an emotional condition.

Appellant requested an oral hearing before an Office hearing representative. The hearing was held on June 18, 2002. She submitted medical reports from Dr. C.M. Erstling, a Board-certified psychiatrist and neurologist, dated September 25 to October 25, 2001, who diagnosed depressive disorder and adjustment disorder with anxiety relating to her fear of losing her

pension. He advised that appellant's interim negative evaluation triggered the onset of her psychiatric disorder. Dr. Erstling advised that appellant's ability to focus, concentrate, remember and function as a nurse were severely compromised by her anxiety, depression and her difficulties with the employing establishment and her concerns about being treated unfairly. In an attending physician's report dated September 25, 2001, he diagnosed depressive disorder and adjustment disorder with anxiety and noted with a check mark "yes" that appellant's condition was caused or aggravated by her employment duties, specifically noting that she had a suicide ideation after a communication from her boss.

Also submitted were letters from Maureen C. Robbins dated June 13, 2002, who noted that she was appellant's manager from 1995 to 1997. She indicated that in the summer of 2000 she noticed that appellant was overwhelmed as her division officer had detached from the clinic, the other clinic nurse was on medical leave and several new medical providers had joined the staff. Ms. Robbins noted that appellant's workload increased and no assistance was provided to her. A letter from Nancy M. Bagbey, an automation clerk, dated June 17, 2002, noted that from August to the fall of 2000 appellant was the only nurse in the family practice clinic. She advised that a civilian nurse was on medical leave for surgery and appellant's supervisor was frequently out of the clinic.

The employing establishment submitted a note from Captain Hanson dated July 22, 2002, who advised that, during the summer of 2000 there were staffing shortages due to illness, surgery, vacations and separation from military service. In her affidavit dated August 15, 2002, she advised that, after receiving Dr. Erstling's report of October 25, 2001, it was clear that appellant would not be returning to work and Lieutenant Dolak recommended her removal, which was finalized on May 10, 2002. Also submitted was an affidavit from Lieutenant Dolak, a supervisor, dated August 15, 2002, who noted that he was an observer at appellant's mid-term evaluation and advised that appellant disagreed with Lieutenant Hardesty's negative evaluation of her performance. He stated that the employing establishment tried to accommodate appellant and return her to work but its efforts failed. Lieutenant Dolak indicated that shortstaffing and appellant's absence were having a negative effect on patient care and employee morale.

In a decision dated August 26, 2002, the hearing representative affirmed the decision of the Office dated November 2, 2001.

By letter dated July 21, 2003, appellant requested reconsideration and submitted a new report from Dr. Michael Baaklini, a cardiologist, dated October 22, 2002, who diagnosed severe depression, bursitis of bilateral hips, alcoholism and severe cardiac arrhythmia. He noted that she had been out of work since January 2001. Also submitted was a report from John A. Wolfe, Ph.D., a psychologist, dated November 15, 2002, who noted treating appellant for forgetfulness and depression. He advised that her memory problems and depression began in February 2001, when she was under significant work pressures, received a poor performance evaluation and was terminated. The physician diagnosed cognitive disorder and major depression and recommended continued counseling or psychotherapy.

In a merit decision dated December 16, 2003, the Office denied modification of the prior decision.

LEGAL PRECEDENT

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, 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 factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

Furthermore, although the handling of disciplinary actions, evaluations and leave requests, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer and not duties of the employee.⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *Id.*

part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.⁸

ANALYSIS

Regarding appellant's allegation that she was unfairly given a poor performance rating on January 12, 2001 this relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and does not fall within the coverage of the Act.⁹ The performance evaluation dated February 1, 2001 indicated appellant's strengths, including attendance at multiple courses, maintaining certification, receiving an internal customer award in November 2000 and extreme attention to detail with telephone consults and provider scheduling reviews. The evaluation also noted areas for improvement, including taking a more active clinical role in patient check-in, assisting staff and providers with clinic procedures, staff and ancillary personnel training, more of a willingness to be involved with patient care and a need to accept direction from supervisors. The employing establishment contended that Lieutenants Dolak and Hardesty acted reasonably in the administration of the personnel matters. Although appellant has made allegations that the employing establishment erred and acted abusively in these administrative and personnel matters, she has not provided evidence to substantiate such actions were in error, abusive or unreasonable in nature. The Board has held that, where the evidence demonstrates that the employing establishment has neither erred nor acted abusively, coverage under the Act will not be afforded.¹⁰ The Board, therefore, finds that appellant has not established a compensable factor pertaining to these administrative matters.

In the instant case, the Office found and the Board agrees that appellant has established compensable factors of employment with respect to her allegation that she was understaffed at the employing establishment beginning July 2000 and as a consequence was overworked. However, her burden of proof is not discharged by the fact that she has established 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 has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.¹¹

Appellant submitted various medical records from Drs. Gloor, Letourneau, Erstling, Baaklini and Wolfe. None of these reports, however, mention the fact that she was overworked because the clinic was understaffed beginning July 2000 until January 12, 2001 as contributing factors to appellant's condition.

⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

⁹ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁰ *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, 44 ECAB 470 (1993).

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

Dr. Letourneau, in reports dated February 7 to July 18, 2001, noted that appellant was being treated for work-related mental illness and major depressive episode. He indicated that she refused to cooperate with the employing establishment and had a passive aggressive communication style which precluded an amicable resolution of her work issues. The physician opined that appellant's depression was directly and causally related to the degree of stress she incurred while working at the employing establishment and noted that appellant would be "angry and depressed and anxious until she has punished the military financially." However, in an attending physician's report dated July 18, 2001, Dr. Letourneau appeared to equivocate with regard to the cause of appellant's emotional condition and indicated that it was not caused or aggravated by her employment duties and noted that he terminated care with appellant on July 18, 2001 because her pursuit of financial compensation interfered with his attempt to help her recover from her illness. The Board has found that medical opinions which are speculative or equivocal in character have little probative value.¹² Moreover, in none of his reports did Dr. Letourneau attribute appellant's emotional condition to being understaffed and overworked for the period July 2000 to January 12, 2001.

Other reports from Dr. Erstling dated September 25 to October 25, 2001, diagnosed depressive disorder and adjustment disorder with anxiety relating to appellant's fear of losing her pension. He further advised that her negative interim evaluation triggered the onset of her psychiatric disorder. However, Dr. Erstling too did not attribute appellant's emotional exacerbation to the fact that the employing establishment was understaffed and she was overworked for the period July 2000 to January 12, 2001. Dr. Baaklini's report dated October 22, 2002 diagnosed severe depression, bursitis of bilateral hips, alcoholism and severe cardiac arrhythmia. He noted appellant had been out of work since January 2001. Dr. Baaklini did not mention appellant being understaffed and overworked as an aggravating employment factor for her emotional condition. Likewise, Dr. Wolfe's report dated November 15, 2002, noted treating appellant for forgetfulness and depression and advised that her memory problems and depression began in February 2001, when she was under significant work pressures and received a poor performance evaluation and was ultimately terminated. However, Dr. Wolfe also did not attribute appellant's emotional condition to the fact that she was understaffed and overworked during the period July 2000 to January 12, 2001.

The Board finds that appellant has not submitted sufficient rationalized medical evidence establishing that her emotional condition is causally related to the accepted compensable employment factors.¹³

¹² *Frank Luis Rembisz*, 52 ECAB 147 (2000).

¹³ *Ernest St. Pierre*, *supra* note 11.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member