

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

_____)
HAZEL CLARK, Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, St. Louis, MO, Employer**)
_____)

**Docket No. 04-813
Issued: July 9, 2004**

Appearances:
Hazel Clark, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 9, 2004 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated December 9, 2003, which denied modification of the prior determination that appellant had not established an injury causally related to compensable work factors. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an injury causally related to a compensable work factor.

FACTUAL HISTORY

The case was before the Board on a prior appeal. In a decision dated December 9, 2002, the Board found that appellant had not substantiated a compensable work factor as contributing

to the claimed conditions of stress, coronary disease and a heart attack. The Board noted appellant had alleged that a September 20, 1990 decision from the Equal Employment Opportunity (EEO) Commission had ordered the employing establishment to reinstate appellant to her former position. The record, however, did not contain a copy of the decision. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By letter dated September 15, 2003, appellant requested reconsideration of her claim. Among the evidence submitted was a copy of a September 20, 1990 EEO decision with respect to appellant's claims of discrimination by the employing establishment. The EEO determined that, with respect to the employing establishment's termination of appellant's employment, "appellant has carried her burden of proof by showing that the agency's actions violated Title VII with regard to her claim of discrimination based on race and color." The employing establishment was directed to reinstate appellant to her former position. Appellant also submitted an unsigned settlement agreement between her and the employing establishment.

By decision dated December 9, 2003, the Office denied modification of its prior decisions. The Office stated that the evidence submitted by appellant consisted of "settlement agreements" that did not establish error or abuse by the employing establishment.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying 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.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 workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴

It is well established that decisions of the EEO are of probative value with respect to the allegations made by the claimant.⁵ While the Board has previously explained that final decisions of the EEO are not binding upon the Board, such decisions are of probative value and may establish appellant's *prima facie* case, when evaluated with surrounding evidence.⁶

ANALYSIS

In this case, the Office received, on October 21, 2003, a September 20, 1990 EEO decision with respect to appellant's allegation of discrimination. The Office, in the December 9, 2003 decision, did not specifically discuss the EEO final decision, but rather referred in general to settlement agreements with the employing establishment which resulted from the EEO decision.

The record contains an undated and unsigned settlement agreement between appellant and the employing establishment. As it has not been signed it remains a proposed agreement; even if ratified, the agreement stated that there was no admission of fault by either party and on its face would not establish a compensable work factor.

The September 20, 1990 EEO decision, however, made a specific finding of discrimination based on race in the termination of appellant's employment in February 1987. The Office has never made a finding regarding the probative value of this EEO decision, with regard to the other evidence of record. As noted above, a claim of discrimination may be a compensable work factor if supported by probative evidence. Appellant has now submitted probative and reliable evidence of a compensable work factor with respect to an action of the employing establishment. The Office must make findings regarding this evidence. The case will accordingly be remanded to the Office for an appropriate decision.

CONCLUSION

The Board finds that appellant submitted probative evidence of a compensable work factor regarding her termination of employment in 1987. The case will be remanded to the Office for a proper determination of whether appellant has established an injury causally related to a compensable work factor.

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *See, e.g., Jimmy L. Day*, 48 ECAB 654 (1997).

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2003 be set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: July 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member