United States Department of Labor
Employees' Compensation Appeals Board

SANDRA KAMONT, Appellant	)	
and	)	**Docket No. 04-1071**
	)	**Issued: February 14, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS, Employer	)	

Appearances:
James L. Farrior, III, 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 March 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 10, 2003 which denied her emotional condition claim. 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On December 11, 2000 appellant, then a 60-year-old medical assistant, filed an occupational disease claim alleging that she developed major depression with psychotic features while in the performance of duty. Appellant first became aware of her condition and its relation

to her work on February 12, 1999. Appellant stopped work on September 5, 2000. She submitted a statement indicating that her request for a reasonable accommodation was denied and that she was separated from her coworkers in a closed, abandoned medical ward without a telephone. Appellant indicated that she experienced chronic pain due to an injury that occurred on April 30, 1998 and developed severe depression such that she could not do her housework, cook or work because she became irritable and could not concentrate. Also submitted were personnel and leave records, and a copy of appellant's reasonable accommodation request.

In a report dated February 12, 1999, Dr. Paul Pyles, an attending Board-certified psychiatrist and neurologist, indicated that her chronic pain was causing depression and that appellant needed to avoid work-related stress and reassigned to a different supervisor. In a November 27, 2000 duty status report, Dr. Pyles diagnosed depression with psychosis due to chronic pain from an accident on April 30, 1998 and again indicated that personality conflicts and paranoia prevented appellant from functioning in a workplace setting. In a February 16, 1999 memorandum, the employing establishment denied appellant's request to change her tour of duty. In a report dated September 19, 2000, Dr. Joe Jackson, Board-certified in neurology and psychiatry, indicated that appellant was removed from work for psychiatric reasons. On October 5, 2000 Dr. Pyles diagnosed major depression, severe, recurrent with psychotic features, personality disorder, chronic pain syndrome with arthritis and severe hypertension.

In a letter dated January 10, 2001, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested that she submit additional factual and medical evidence.

Appellant subsequently submitted medical reports regarding her depression.[1]

In separate affidavits dated April 5, 2001, appellant alleged that her illness was caused by several work-related incidents and that she was on leave without pay since November 6, 2000. She reported constant pain from work-related injuries to her neck, back, shoulder, right hip, arms and hands rendering her unable to do normal activities of daily living. Appellant described her employment injuries and alleged that, after her hands were operated on in 1997, she began having problems driving.[2] After a second neck operation in October 1998, she became depressed because of the pain. She alleged that her supervisor denied her request to accommodate her hours by adjusting her shift by a half hour to allow her to ride with family and a coworker. She received a letter of counseling for photographing an employee, and received a letter of discipline concerning a conversation in which she was told about a nonveteran being hired by the employing establishment. Appellant contended that she was sent to an abandoned medical ward with no telephone and isolated from coworkers on several occasions. She alleged being treated

[1] The reports included an October 12, 2000 report in which Dr. Jackson advised that appellant was being treated for depression that contributed to chronic pain syndrome; a June 16, 2002 report in which Gail K. Farror, an internist, noted that appellant's depression and anxiety were worsened by her employer; and various reports from Dr. Pyles regarding her depression and chronic pain syndrome, and recommending that appellant be assigned to a different supervisor.

[2] Appellant provided several file numbers including file number 060621773 for a February 17, 1992 injury, file number 060601724 for a June 28, 1994 injury, file number 060625925 for an April 19, 1995 injury, file number 060702341 for an April 30, 1998 injury and file number 062005183 for a March 22, 2000 injury.

as an outcast because other employees feared the same treatment if they associated with her. She alleged that her supervisors caused problems with her leave and pay by improperly marking her as working on Fridays when she was actually on leave without pay, that her position was downgraded and that she was not given assistance after she filed an Equal Employment Opportunity (EEO) complaint about the denial of a promotion. Appellant also alleged that she had a prior claim for stress that was denied.[3] She asserted that her supervisor refused to file her occupational disease claim (Form CA-2) and that when she gave the duty status report (Form CA-17) to her supervisor, she was promptly transferred to an empty ward.

On April 9, 2001 the Office received a statement from an employee relations specialist at the employing establishment who indicated that appellant never provided her supervisor with a CA-2 and, after being advised of the procedure, chose not to submit the form. The Office also received a copy of appellant's office aid duties, effective April 10, 2000, indicating that she would work from 7:30 a.m. to 4:00 p.m.

The Office also received correspondence from appellant regarding a picture taking incident at work in which she received discipline and correspondence from appellant dated October 10, 1995 in which she indicated that she was forced to ride the employing establishment shuttle against her doctor's orders or lose her job. Several other documents relate to her complaints of stress and discrimination. The record also includes a November 15, 1995 memorandum from the chief of medical administration services finding that appellant could not be given a GS-6 position outside of the employing establishment, that there was no intentional delay in the filing of her paperwork, that he could not restore her performance appraisal, that 35 minutes of compensatory time would not be granted for her shuttle rides and that her verbal requests for a meeting with her husband were denied only because she had not advised that he was also her union representative. The Office also received a November 17, 1999 memorandum from the chief of ambulatory care services regarding the needs of the employing establishment and a December 16, 1999 letter from appellant in which she indicated that she did not wish to return to medical services.

In a May 3, 2001 statement, Betty Ryals, a coworker, noted that appellant's position was downgraded when it was converted into a GS-4 position. Appellant was given the option of staying in a lower level position or being reassigned, and was not selected for a higher position. She explained that the supervisors did not want appellant in a higher position as she had previously filed an EEO complaint. She alleged that, after managers were caught abusing their lunch periods, the staff suspected that appellant was behind the leak. Ms. Ryals explained that she was ostracized after that and could not afford to be associated with appellant. She also explained that appellant was transferred to a different area of the employing establishment that necessitated her having to ride the shuttle which was an uncomfortable ride and a form of harassment. She noted that appellant was eventually returned to her unit in an isolated area with no telephone, computer or traffic.

On December 2, 2000 Debra Wade, a coworker, indicated that she was assigned a GS-5-6 position in 1997 as a payback for testifying. She alleged that she was informed not to speak to

[3] File No. 6568074.

appellant, and that the GS-5 position was downgraded to "get rid of Sandra...." She explained that Ms. Gustins, a supervisor, was going to "push them out one way or the other." Ms. Wade stated that Ms. Gustins was good friends with appellant's supervisor, Gail Harwell. She overheard conversations where they discussed placing appellant in a ward by herself so that they could get rid of her.

In a June 6, 2001 decision, the Office denied appellant's claim on the grounds that she had not established any compensable factors of employment.

Appellant submitted reports from Dr. Pyles who treated her for severe depression due to chronic pain and work-related stress due to an accident at work on April 30, 1998.

By letter dated June 15, 2001, appellant requested a hearing which was set for April 25, 2002 and subsequently held telephonically on May 9, 2002.

In a memorandum dated June 4, 2002, Dr. Khaled Rikabi, a Board-certified internist, noted that appellant's history included a March 23, 2000 work injury when appellant tripped while coming out of an elevator on uneven steps. He noted that, on October 17, 2000, appellant was unable to work and indicated her main concern was chronic pain. Dr. Rikabi advised that, on March 27, 2000, he expressed concern over appellant's grief over the loss of her daughter, but indicated that she did not discuss the matter with him.

In a June 5, 2002 response, the employing establishment indicated that appellant was accommodated, that her tour of duty was from 8 a.m. to 4:30 p.m. which was an appropriate time frame to call patients, and denied that she was not allowed access to a telephone. Further, the employing establishment denied that appellant was ignored or unsupervised.

In a statement dated June 13, 2002, appellant responded to the employing establishment's allegations.

By decision dated August 5, 2002, the Office hearing representative affirmed the Office's June 6, 2001 decision.

In a September 3, 2002 statement, Ms. Wade alleged that Ms. Harwell wanted to punish appellant by keeping her out of sight because she filed EEO complaints and because she had reported the staff for gambling and feared that she would be labeled a troublemaker if seen with appellant. She also alleged that when appellant's doctor recommended a change in supervisors, Ms. Harwell recommended placing appellant on a floor with no telephone because she did not want a mark on her record.

In a September 16, 2002 report, Dr. Harry Danielson, a Board-certified neurosurgeon, indicated that, on February 1, 1999, appellant could work light duty with no computer work or typing for six weeks, no rapid head/neck movements, no working/stacking overhead, no prolonged extension of neck, no prolonged ladder climbing and advised a change of positions from sitting to standing to ambulating as tolerance demands. He also indicated that appellant could drive. He further indicated that appellant alleged that, on February 18, 1999, appellant was

detailed to assemble admission packages, which was comprised of repetitive work for six weeks in violation of her restrictions, as she had to stand for long periods with no place to sit.

By letter dated November 10, 2002, appellant requested reconsideration and enclosed additional evidence. Appellant alleged that she had a new supervisor in January 2000 and that Michelle Simpkins, a nurse, was not competent to address her employment duties as she did not start work until after the incidents in 1999 occurred. Appellant also alleged that when she was no longer under the supervision of Jeannie Demoruelle, a former supervisor, she was not given access to the patient lists which she needed to make telephone calls.

In an October 29, 2003 response, Ms. Simpkins indicated that appellant was instructed to continue with her telephone duties and assemble packets, both of which were in accordance with her restrictions, and enclosed a copy of appellant's written-duty assignments. Ms. Simpkins noted that, although different tasks may have been assigned, they were all within her medical restrictions and took place at different locations.

In a report dated November 14, 2003, Dr. Pyles advised that appellant underwent surgery for herniated discs at C5 and C6. He treated appellant for her depression and anxiety secondary to chronic pain syndrome resulting from her on-the-job injury.

In a November 16, 2003 response, appellant disagreed with Ms. Simpkins' assessment of her working conditions. She indicated that the initial limited-duty position signed by Dr. Danielson was signed in February 1999 and attached a copy.

By decision dated December 10, 2003, the Office denied modification of the August 5, 2002 decision.[4]

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.[5]

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an emotional reaction to regular or

[4] The Office also advised appellant that there was *prima facie* evidence that she may have a consequential injury and should pursue that matter under her previous claims.

[5] *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 (1966).

specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from such factors 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.[6] Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis for the claim by supporting her allegations with probative and reliable evidence.[7]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Office denied the claim on the grounds that appellant did not establish any compensable employment factors. The Board must review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Federal Employees' Compensation Act.[8]

Several of her allegations of factors that caused or contributed to her condition fall into the category of administrative or personnel actions. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.[9] 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.[10] Absent such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant that fall into the category of administrative and personnel actions include: the denial of a promotion;[11] being downgraded;[12] the assignment to work in an isolated area;[13] receiving a letter of discipline;[14] the change in her shift or work schedule[15] and denial of leave.[16]

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[6] *See Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

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

[8] 5 U.S.C. §§ 8101-8193.

[9] *Id.*; *see also James E. Norris,* 52 ECAB 93 (1999); *Margaret Krzycki*, 43 ECAB 496 (1992).

[10] *Id.*

[11] *Tanya A. Gaines*, 44 ECAB 923 (1993).

[12] *See Ernest J. Malagrida*, 51 ECAB 287 (2000).

[13] *Janet Yates*, 49 ECAB 240 (1997).

[14] *Effie O. Morris*, 44 ECAB 470 (1993).

[15] *See Gloria Swanson*, 43 ECAB 161 (1991).

[16] *See James P. Guinan*, 51 ECAB 604 (2000).

Regarding her allegation that the employing establishment denied appellant a promotion, eliminated her position, downgraded her, placed her in an isolated ward and gave her a letter of discipline, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.[17] While appellant provided statements from Ms. Wade and Ms. Ryals to the effect that her position was eliminated and that she was downgraded when her position was converted into a GS-4 position and another individual received a position as "payback," this evidence is not sufficient to demonstrate error or abuse. Ms. Ryals alleged that the employing establishment did not want appellant in a higher position because she had filed an EEO complaint, but provided no specific evidence to substantiate her allegation. Ms. Ryals alleged that the supervisors wanted to get rid of appellant. However, as noted, neither Ms. Wade nor Ms. Ryals provided specific dates, times or instances to substantiate their allegations. Regarding the discipline received for taking a photograph and discussing a nonveteran's hiring, appellant alleged that this was not appropriate and filed grievances. However, she did not submit any grievances which were resolved in her favor or other evidence supporting her assertions that the employing establishment's actions constituted error or abuse. Appellant has not established a compensable employment factor under the Act with regard to these allegations.

Appellant also alleged that the employing establishment refused to honor her requests to change her tour of duty by half an hour to allow her to ride with family and a coworker. The Board finds that the evidence does not establish that the employing establishment's refusal to change appellant's tour of duty by a half hour was erroneous or a form of harassment or discrimination.[18] Any inconvenience to appellant's daily commute to work with coworkers is not a factor arising in the performance of duty but would be analogous to emotional frustration in not being allowed to work specific hours and thus not a compensable factor of employment.[19]

She alleged that her light-duty assignment was changed, that she was placed in the isolated ward in violation of her restrictions and that she was not given a telephone.[20] The Board has long held that the assignment of a work schedule is an administrative function of the employing establishment and, absent error or abuse, does not constitute a compensable factor of employment.[21] Appellant provided a report from Dr. Danielson dated September 16, 2002 in which he opined that appellant had been placed in a work environment in violation of her restrictions when she was made to do repetitive tasks for six weeks with prolonged standing and no seating. However, this history was contradicted by a statement from Ms. Simpkins, who advised that appellant's work assignments were within her restrictions. She indicated that

[17] *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

[18] *See George H. Clark,* 56 ECAB ___ (Docket No. 04-1572, issued November 30, 2004).

[19] *See id.*

[20] The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.

[21] *Peggy R. Lee*, 46 ECAB 527 (1995).

appellant was placed where she was needed, that she had access to a telephone, and that her tour was appropriate for contacting patients. She further noted that appellant's request to change her tour was eventually accommodated. As appellant has not submitted evidence to corroborate error or abuse, she has not established a factor with respect to this administrative matter.

Regarding appellant's leave requests, the handling of leave requests and attendance matters are generally related to employment, but are administrative functions of the employer and not duties of the employee.[22] Appellant has not demonstrated that the employing establishment erred or acted abusively in handling her various leave requests. Although she alleged that she had problems with her leave and pay caused by improper marking of her days, she has not provided sufficient evidence to establish that the employing establishment erred or was abusive with respect to her leave.

Appellant's general dissatisfaction with the way in which she was supervised, including her allegation that none of her supervisors visited her, is not compensable. Complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises her discretion fall, as a rule, outside the scope of coverage provided by the Act.[23] This principle recognizes that a supervisor or manager in general must be allowed to perform her duties and employees will, at times, dislike the actions taken but mere disagreement or dislike of a supervisory or managerial action will not be actionable, absent evidence of error or abuse.[24] In the instant case, appellant has not submitted evidence of error or abuse to establish that her supervisors acted unreasonably in discharging their respective managerial duties.

Appellant alleged that harassment and discrimination by her supervisors contributed to her claimed stress. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[25] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[26] She alleged that her supervisor was trying to "get rid" of her by placing her in the empty ward in retaliation for filing her EEO claims, and because she was suspected of reporting supervisory abuses of the lunch period. Appellant provided statements from Ms. Wade and Ms. Ryals, who generally stated their opinion that the supervisors were trying to "get rid "of appellant. Although they generally alleged that appellant was forced to ride the shuttle, ostracized and suspected of leak regarding the long lunches, these allegations appear to be mere perceptions as they did not provide corroborating evidence of specific instances. For example, neither Ms. Wade nor Ms. Ryals included specific dates or times involving particular supervisors. On the other hand, the

[22] *Dinna M. Ramirez,* 48 ECAB 308, 313 (1997).

[23] *Marguerite J. Toland,* 52 ECAB 294, 298 (2001).

[24] *Id.*

[25] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 5.

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

employing establishment explained the reasons for its actions, denied that appellant was subjected to harassment or discrimination and denied that specific events were directed towards appellant in a harassing or discriminatory manner.

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, she, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[27]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 10, 2003 is affirmed.[28]

Issued: February 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[27] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki, supra* note 9.

[28] To the extent that appellant alleged her emotional condition arose from her accepted employment injuries, in other claims, this decision does not preclude her pursuing a claim for a consequential injury with regard to any such claims.