United States Department of Labor
Employees' Compensation Appeals Board

BARBARA A. PLANCK, Appellant	)	
and	)	**Docket No. 04-1799**
	)	**Issued: February 7, 2005**
DEPARTMENT OF THE AIR FORCE, AVIATION BRANCH SAFETY OFFICE, Fort Rucker, AL, Employer	)	

Appearances:
Joel M. Nomberg, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 12, 2004 appellant timely filed an appeal from an April 16, 2004 decision of the Office of Workers' Compensation Programs which denied appellant's request for reconsideration of a January 14, 2004 merit decision, which denied appellant's request for modification of its July 21, 2003 decision. The July 21, 2003 decision found that she had not established that she sustained an emotional condition and irritable bowel syndrome in the performance of duty. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant has established that she developed an emotional condition and irritable bowel syndrome in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On May 16, 2003 appellant, then a 49-year-old safety technician, filed a claim for compensation. In an undated statement, received by the Office on June 25, 2003, appellant stated that she was referred to the employing establishment for two jobs, safety technician and safety and occupational health specialist. Appellant was hired for the safety technician position. She expressed concern that she would not receive adequate training since the person she expected to train her was attending her own training full time. Appellant related that, in February 2003, she went to the union office on the premises during her lunch hour and was given of copy of the collective bargaining agreement. When she returned to her office, Ronald Cox, her supervisor, asked her why she went to the union office. Appellant commented that she felt someone was spying on her because Mr. Cox had gone to lunch before she did. She contended that whoever informed her supervisor was aiding him in harassing her. Appellant stated that she did not receive a position description or job standards even though she had been working for three months at the employing establishment. She stated that, from December 2002 to March 2003, 98 percent of her work was secretarial. Appellant indicated that the only technical duty she performed was handling the aviation statistics. She met with a Ms. Pike, a personnel specialist, who agreed with her concerns and reasons for feeling that she had been deceived in accepting a secretary position. On March 18, 2003 appellant met with Mr. Cox to state that her workload did not match her capabilities and that she had no job standards or a position description of her responsibilities. She alleged that Mr. Cox stated that he had changed the secretarial position into a safety technician position so he could reinstate the previous job holder following a reduction-in-force. Appellant stated that the conversation was not progressing so she requested union representation and filed a grievance. At a March 23, 2003 meeting Mr. Cox gave appellant her standards. Appellant was not satisfied with her standards, arguing that employees were expected to have input regarding their standards and position description. Mr. Cox also gave a memorandum for the record concerning the March 13, 2003 meeting which appellant interpreted as a reprimand. She alleged that Mr. Cox denigrated her in an email for handing him documents which he had requested. Appellant commented that she thought her position was ground safety, not aviation. She alleged that Mr. Cox created additional pressure that caused unacceptable stress. Appellant stated that, after she filed the grievance, she was subjected to daily bullying which gradually made her feel worthless. She contended that she was treated different from her coworkers by overbearing management and misuse of power. She argued that management was deliberately undermining her by overloading her with work and giving constant criticism.

Appellant alleged that, in an April 29, 2003 email, Mr. Cox proposed to remove her from the alternate work schedule she had requested. Mr. Cox indicated that, if she returned to a normal, eight-hour day schedule, there would be no problem. He warned her that, if she had a problem with his request, he would continue the formal process of removing her from the work schedule. On May 7, 2003, Mr. Cox informed appellant that coworkers stated that she was leaving work early every day. She contended that the statement was not accurate. Appellant alleged that Mr. Cox became loud and went into a rage. When she asked to go to the union office, Mr. Cox replied that appellant could do so and ordered her out of the office. The next day, appellant went to the base hospital complaining of intense stomach cramps. She stated that the physicians who examined her concluded that stressful working conditions were affecting her health and gave her a note that she was sick. Appellant indicated that an examination by her

personal physician revealed her blood pressure was very high. She stated that Mr. Cox subsequently contacted her physician without her permission, which constituted an invasion of privacy.

Appellant began to experience abdominal pain in April 2003, with painful chronic diarrhea and constipation after her workload became too stressful. Her blood pressure would also rise and she would feel dizzy. On one occasion, appellant did not make it to the bathroom in time and soiled her pants. She left 15 minutes early that day and locked the doors of the office. On the following Monday, appellant received a message from Mr. Cox that he returned to the office on the day of the incident and demanded her reason for leaving the telephone uncovered. Appellant explained the incident to him and then began crying because she felt humiliated. Mr. Cox sent her outside to calm down.

In a June 16, 2003 response, Mr. Cox stated that he advertised for a position from a GS-7 to a GS-11 to get as many applicants as possible. Mr. Cox indicated that appellant received training from her predecessor during her first week on the job. He commented that she went to the union office in her first week and he asked her whether she had any complaints in order to determine whether a labor-management issue had arisen. Appellant advised that she had no complaints. He told appellant she was free to go to the union for any addressable issue but suggested that she should resolve matters at the supervisory level before going to the union. He indicated that she went to the union office often but had not been told that she had to complete her past due work before going to the union office. Mr. Cox remarked that he did not give appellant a copy of the position description in her first 30 days so as to allow her to settle in. He was puzzled by her claim that she never received a position description because she often complained that the duties of her position did not match the position description. He stated that 40 percent of appellant's work was administrative, not the 98 percent she claimed.

Mr. Cox indicated that he had talked with appellant on numerous occasions about the difference between the job she expected and the job as it existed. He commented that she misrepresented his explanation for the change in the reclassification of the position. Mr. Cox noted that the prior person who held the position had been bumped out of the position twice. He stated that the qualified GS-318 employees who replaced her were ill-prepared to do the job. Mr. Cox, therefore, looked at the position in terms of the duties performed by the GS-318 position, which in turn led to his request to have the position reclassified. He pointed out that the reclassification was done by the Civilian Personnel Operations Center. Mr. Cox stated that appellant's complaint that she had no input into her performance standards was absurd. When he tried to discuss the performance standards with appellant he could not get past her insistence that the job was not what it should have been. Mr. Cox commented that appellant was not reprimanded in the March 25, 2003 meeting. He denied her allegations that she was bullied, treated unfairly and otherwise harassed. As to appellant's alternative work schedule, she worked 80 hours in 9 days and took leave on the last day of the pay period. He indicated that her job required covering her telephone every day and that, if she was not there, he would have to cover the telephone. Mr. Cox stated that the day appellant would take off became a lost workday for him. He found overdue suspenses on her desk which could not be processed until the following week. Mr. Cox asked appellant to return to a regular schedule, which she refused. After consulting with the union, he established how appellant's alternate schedule adversely affected the work at the employing establishment and stated that his actions were not in retaliation.

Mr. Cox was informed by several coworkers that appellant routinely left work early, sometimes just after he left the employing establishment. He sent an email informing all employees that they were expected to be at their place of duty for all the hours of their tours of duty. Appellant responded by contending that the statements that she left work early were untrue. Mr. Cox denied that he ever raised his voice when talking to appellant. He noted that she had complained that a supervisor had yelled at her even though he was within 15 feet of the conversation and heard the supervisor speak in a normal conversational tone. In response to appellant's claim of stressful work, Mr. Cox stated that her only duty when the telephone rang was to copy the information, given in a standard format and take the information to the air safety specialist responsible for that type of aircraft. Appellant had to be reminded on many occasions that when she left her desk, she needed to have someone cover the telephone. Appellant began complaining about abdominal pain in April 2003. He discussed the incident in which appellant stated that she had soiled herself, but questioned whether the incident occurred as alleged.

In letters of May 22 and June 20, 2003, Mr. Cox instructed appellant to submit medical information to support her absence from work. He advised appellant that, if she did not reply by July 10, 2003, she might be subjected to disciplinary action.

In an undated statement, received by the Office on July 18, 2003, appellant noted that she had completed the training and had the experience to qualify as an environmental safety and occupational health specialist. She wanted to be hired for the safety and occupational health position, a GS-7 position with potential promotions to GS-11. She alleged that accepting the safety technician position would not harm her chances to be hired for the position she preferred. She claimed that she was overloaded with tasks that were not completed before her appointment to the position. She met with Ms. Pike early March, who explained that Mr. Cox had changed the position from a secretary position to a safety technician, bypassing the Human Resources personnel and forwarding it directly to his superiors. Mr. Cox gave her a copy of the position description for a safety technician at the employing establishment. Ms. Pike expressed the opinion that appellant's position should have remained a secretarial position. Appellant again described the March 18, 2003 meeting in which Mr. Cox explained that he had converted the position from secretary to safety technician to avoid having her predecessor bumped from the position due to a reduction-in-force. Appellant reported incidents mentioned in her initial statement.

In a July 23, 2003 letter, J. Emerson Garrison, the president of the union, and Thomas L. Hunt, the chief steward, indicated that appellant's complaint was that she was hired as a safety technician but was placed in a position that consisted primarily of clerical duties. The union officials stated that appellant did not receive a copy of her position description until she filed a grievance on March 20, 2003. She did not agree with the performance standards and filed a memorandum with her senior rater, expressing her disagreement. The senior rater approved the performance standards without amendment. When Mr. Cox indicated to appellant that she should work a regular schedule, they met with him on May 6, 2003. They informed him of what he needed to prove to be able to terminate appellant's compressed work schedule. The next day, appellant received an email from Mr. Cox, accusing her of leaving work early. The union officials stated that the position had been changed from a clerical position to a safety technician. After appellant was hired, Mr. Cox attempted to convert the position to a clerical position. The union officials concluded that appellant became disabled after she contested management's

insistence that she perform clerical duties rather than the safety technician duties for which she was hired.

Appellant submitted a copy of her position description which listed such duties as prepare the command operating budget, manage the safety training awards program, review ground and aviation accident reports, compile statistical data for an analysis of accident trends, maintain the employing establishment's aviation database and manage the flow of administrative actions. Appellant contended that other duties should have included work in safety inspections, investigating accidents and obtaining and providing safety information; conduct independent safety inspections of child care facilities and recreation facilities; investigate accidents and review accident reports to determine the specific causes of the accident and the nature of injuries and property damage; provide information to supervisors and employees about accident hazards at the employing establishment; and conducting safety meetings. Appellant submitted the performance standard for a safety technician at the employing establishment which contained the standards she had mentioned.

In a July 11, 2003 report, Dr. Connie Richardson, an attending physician, diagnosed uncontrolled hypertension, acute gastritis, irritable bowel syndrome, mood disorder, adjustment disorder with depressed mood and post-traumatic stress disorder. She stated that appellant was unable to manage complex staff actions because she was unable to deal with the stress caused by a hostile work environment. Dr. Richardson indicated that appellant was unable to provide technical advice because of memory disturbances due to depression and post-traumatic stress disorder.

In a July 21, 2003 decision, the Office denied appellant's claim for compensation on the grounds that she had not established that her claimed conditions were sustained in the performance of duty.

In an October 2, 2003 letter, appellant requested reconsideration. She contended that the evidence submitted showed that the employing establishment had erred and acted abusively to her. Appellant claimed that an increased workload and work-related stress from the demands of the job and persecution by management contributed to her emotional condition. She contended that her inexperience in aviation matters and the required secretarial duties caused emotional distress. Appellant argued that she was expected to make life and death decisions to take immediate action which was critical to the safety of others in an area in which she was not trained. Appellant claimed that the medical evidence showed that her disability arose from her emotional reaction to the high demand situations, which occurred within the performance of duty.

In an August 25, 2003 report from Theron M. Coven, Ed.D., a therapist, authorized appellant's absence from work from August 25 to December 31, 2003. He related appellant's disability to job-related stress and resulting physical and psychiatric problems including hypertension, irritable bowel syndrome, acute gastritis, mood disorder, adjustment disorder with depressed mood and post-traumatic stress syndrome.

In a September 23, 2003 report, Mr. Coven stated that the onset of appellant's condition was March 18, 2003 when her supervisor began "getting really bad." She progressively got

worse until May 7, 2003 when she felt she had enough. He stated that a Minnesota Multiphasic Personality Inventory (MMPI) showed that appellant experienced severe emotional distress characterized by apathy, fearfulness, hopelessness, dysphoria and anhedonia. Mr. Coven indicated that appellant had concentration difficulties and memory deficits. He concluded that appellant's psychiatric problems were a direct result of a hostile work environment in which she faced constant criticism, ridicule and harassment. Mr. Coven diagnosed post-traumatic stress disorder, major depressive disorder and generalized anxiety disorder.

In a November 5, 2003 memorandum, Mr. Cox stated that appellant's administrative duties were mostly routine and similar to most military office settings. He indicated that the database she was to maintain was explained to her in extensive detail. Mr. Cox described her duties as repetitive and not requiring any specific knowledge of aviation. He denied that appellant was ever required to make life or death decisions. Appellant was only required to answer the telephone and take down any information given, which was very routine.

In a December 30, 2003 statement, appellant contested Mr. Cox's opinion that no special aviation knowledge was required. She alleged that she managed the internal safety aviation, ground and special emphasis-training programs. Appellant indicated that she was the training coordinator for both ground and aviation employees. She managed the database of all aircraft accidents or incidents. Appellant stated that she had no problem managing databases but the contents of the database at the employing establishment were created before she began work at the employing establishment. She indicated that on many occasions the information she received from the battalions was not accurate, not properly formatted and contained too many characters to be placed in the database which required her to edit or change the information so that it would fit. Although Mr. Cox described the duties of her position as routine, he had stated on other occasions the importance of the position. Appellant contended that her supervisor had contacted her family physician without her permission which was contrary to federal regulations. She alleged numerous verbal altercations and a tense relationship with her supervisor. Appellant stated that she had discussed her massive workload with her supervisor which constituted a compensable factor of employment.

Appellant submitted a copy of a March 23, 2003 counseling memorandum in which Mr. Cox noted that she disputed which duties were clerical in nature and which duties were those of a safety technician. He informed her that she would be given more duties once she mastered the administrative and office-based part of the safety technician position. Mr. Cox pointed out that appellant had fallen far behind in these duties and that she could not move to another area of job responsibility until she demonstrated an acceptable level of performance in the administrative area of her duties. Appellant also submitted a copy of the April 29, 2003 email.

Appellant also submitted an April 14, 2003 email in which Mr. Cox stated that he did not have a time to be a filter for everything that came to her in the way of requests, information or instructions. He pointed out that some material could be sent directly to where the information was needed without going through him. Mr. Cox noted that appellant's predecessor had established office processes, procedures and requirements. He informed her that she was not yet qualified to reject the established procedures which she had not even tried. He expressed his expectation that appellant would use the established procedures and implement new procedures only if she showed a gain in efficiency.

In a May 7, 2003 email, Mr. Cox noted that he and appellant's coworkers had noticed that she left work early every day. He stated that he expected everyone to be at their place of duty for the full number of hours and minutes for which they were paid. Mr. Cox noted that he had never found it necessary to send out such a reminder to any person at the employing establishment.

In a December 29, 2003 report, Mr. Coven indicated that appellant had shown little improvement in her psychiatric conditions. She was unable to work and continued her leave of absence until June 30, 2004. Mr. Coven related her need for leave to job-related stress. In a December 22, 2003 report, Dr. Richardson stated that appellant had been out of work due to severe mental and physical strain secondary to harassment at her job. She indicated that appellant had uncontrolled hypertension and hyperlipidema and irritable bowel syndrome. Dr. Richardson noted that appellant was being followed for a post-traumatic stress disorder stemming from her harassment. She stated that appellant was unable to work due to her multiple medical probleMs.

In a January 14, 2004 merit decision, the Office denied modification of the July 21, 2003 decision.

In a March 30, 2004 letter, appellant again requested reconsideration. She submitted a March 8, 2004 report from Dr. Richardson, who gave an extensive history of appellant's condition. She noted that appellant attributed her condition to constant criticism, ridicule and harassment at work. Dr. Richardson stated that she and the other physicians treating appellant agreed that her job was the major contributing factor to her disability. She based her opinion on the evidence of record that showed intervening elements of the work environment acted adversely and affected appellant while in the performance of her duties. Appellant also submitted an affidavit from her husband who described her deteriorating emotional condition.

In an April 16, 2004 decision, the Office denied reconsideration on the grounds that the evidence submitted was either not new evidence or not relevant to her claim.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more,

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

coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

ANALYSIS

Appellant's claim is primarily based on her contention that she accepted a position as a safety technician but found it to be more of a secretarial position. She submitted her job description and the job description of a safety technician and pointed out the differences in the work described by the position descriptions. Appellant contended that she was deliberately deceived about the nature of the position by the employing establishment. She submitted evidence to show that the position had originally been a secretarial position but was reclassified as a safety technician position so as to protect a predecessor. Mr. Cox generally agreed with appellant's description in that respect, but noted that she had not demonstrated competency with certain administrative duties to be assigned other safety technician responsibilities. The Board finds that appellant's allegations establish that she desired another position and was dissatisfied with the position she had accepted. As noted, the desire to hold another position is not a compensable factor of employment. Appellant's complaints that the job she had accepted did entail have the duties she expected, is not a compensable factor of employment because it represent her desire to have another position. Appellant alleged that she was deceived into accepting the position. However, the evidence does not establish that the employing establishment deliberately deceived her into accepting a clerical or secretarial position by having it reclassified into a safety technician position. Rather, it appears that certain duties were not assigned under the position description until she demonstrated certain competences.

Appellant contended that she was not given a job description until three months after she began working at the employing establishment. She noted that she did not concur in the job description and had given any input into it. There is no evidence that the employing establishment was required to give appellant the job description within a certain time period. She has not presented any evidence to show that the employing establishment was required to get her input into the job description. Therefore, there is no evidence that the employing establishment's delay in giving appellant her position description were in error or abusive.

Appellant contended that she was subjected to verbal and written harassment after she filed a grievance over the failure to receive a job description and performance standards. She did not provide any description of specific incidents in which her supervisor harassed her, insulted her, shouted at her or verbalized any inappropriate statements. Appellant submitted emails she

[2] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey,* 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985); *Peter Sammarco,* 35 ECAB 631 (1984); *Dario G. Gonzalez,* 33 ECAB 119 (1982); *Raymond S. Cordova,* 32 ECAB 1005 (1981); *John Robert Wilson,* 30 ECAB 384 (1979).

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

received from Mr. Cox which she contended constituted harassment. One communication from Mr. Cox indicated that she should not send every report to him for review but to send some reports directly to other offices as set out in the employing establishment's procedures. In the April 29, 2003 email, Mr. Cox requested that appellant give up her alternate work schedule. In the May 7, 2003 email, Mr. Cox noted his observation and the report by other employees that appellant left work early almost every day. He expressed his disapproval of such conduct. These communications, on their face, do not establish any verbal abuse or harassment of appellant. They reflect the supervisor performing his duties in describing to appellant how to do her job, making an appropriate request for a change in her work schedule and admonishing her for leaving early. Appellant, therefore, has not established that she was subjected to verbal abuse or harassment at the employing establishment.

Appellant contended that she was overloaded with work. The only example she mentioned, however, were the reports and information given to be entered into the database. Appellant has not given any specific information on the work duties she actually performed. A general statement that a claimant finds the work stressful or is overworked is not sufficient to establish a compensable factor of employment. Appellant did not submit sufficient information to support her contention that performing her work caused her emotional condition or gastric complaints.

Appellant has failed to establish a compensable factor of employment. An evaluation of the medical evidence of record is not required unless a compensable factor of employment has been established.[4]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[5] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[7]

[4] *Robert W. Johns,* 51 ECAB 175 (1999).

[5] 20 C.F.R. § 10.608(b).

[6] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[7] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ANALYSIS -- ISSUE 2

In her second request for reconsideration, appellant submitted a report from Dr. Richardson and an affidavit from her husband. The report of Dr. Richardson is not relevant to the issue presented, whether appellant has established a compensable factor of employment. Appellant failed to establish that she was injured in the performance of duty due to a compensable employment factor. Therefore, the medical evidence is not relevant unless and until a claimant first establishes that he or she was injured in the performance of duty. The affidavit from appellant's husband generally described his view of the effects of the job on appellant. He did not witness any of the specific incidents or other matters she cited as the cause of her emotional condition. His affidavit, therefore, is not relevant to the issue of establishing any of appellant's allegations as factual.

CONCLUSION

Appellant failed to meet her burden of proof in establishing that she sustained any physical or emotional condition in the performance of duty. The Office properly denied appellant's request for reconsideration as the evidence submitted was not relevant to the issue of whether appellant established a compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 16 and January 14, 2004 and July 21, 2003 are affirmed.

Issued: February 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member