

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

JEANNE L. GREAVES, Appellant

and

**SMITHSONIAN INSTITUTION,
Washington, DC, Employer**

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**Docket No. 04-227
Issued: June 9, 2005**

Appearances:

*Thomas P. Johnson, III, Esq., for the appellant
Office of Solicitor, for the Director*

Oral Argument Held April 26, 2005

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 3, 2003 appellant filed a timely appeal of the February 19, 2003 merit decision of the Office of Workers' Compensation Programs, which denied appellant's claim for an emotional condition. 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 sustained an emotional condition arising in the performance of duty.

FACTUAL HISTORY

On July 9, 2002 appellant, then a 50-year-old computer specialist, filed an occupational disease claim alleging that she developed major depressive episode and situational stress as a result of being overworked. Appellant stopped work on March 20, 2002 and did not return.

Appellant submitted a statement dated May 7, 2002 which indicated that she was wrongfully issued a letter of reprimand on November 19, 2001 for insubordination and failure to

provide a Novell migration plan to her supervisor. She also alleged that on January 7, 2002 she was unfairly given a proposal to suspend for five days for misconduct relating to two separate email exchanges to her supervisor, Michael Press. Appellant indicated that management countermanded her instructions to the New York office regarding the installation of software patches. She alleged that she was overworked and subject to unreasonable deadlines and specifically noted that she was not given adequate time to resolve computer network problems or to plan and execute a complicated upgrade to the computer network.

Appellant was seen by Dr. Cuong D. Vu, a Board-certified ophthalmologist, who noted treating appellant from March 26 to June 13, 2002 for central retinal vein occlusion of the right eye, atypical and worsening. He noted that appellant's condition was complicated by the development of neovascular glaucoma. The physician limited her employment duties to two hours of computer work. Appellant was also treated by Dr. Alyson L. Hall, a Board-certified ophthalmologist, who, in a report dated July 3, 2002, diagnosed neovascular glaucoma of the right eye. She noted that appellant underwent glaucoma shunt placement combined with retinal surgery on May 9, 2002, however, would not likely recover any vision in her right eye due to the retinal injury from her vascular occlusion.

In a letter dated August 6, 2002, the Office asked appellant to submit 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.

Appellant submitted a letter of reprimand dated November 19, 2001 which noted that appellant was cited for being insubordinate to her supervisor on November 13, 2001. The letter noted that her supervisor, Mr. Press, requested a project plan for Novell migrations and appellant failed to timely provide it. Also submitted was a proposal to suspend for five days dated January 7, 2002. The proposal noted that on December 26, 2001 appellant sent an inappropriate email message to her supervisor referring to problems with a web access problem as "It's all BS." Appellant also submitted several electronic mail (email) messages. In an email from appellant to George Vandyke, a supervisor, dated November 15, 2001, indicated that Mr. Press was not knowledgeable of computer systems and was requesting a consolidation plan that she was unwilling to share with him. In a December 13, 2001 email from appellant to Joseph Johnston, Jr., appellant's second-line supervisor, she informed him that Mr. Press was making her and a coworker, Lauren Greenstein, responsible for assessment tasks that local administrators were suppose to resolve. An email between appellant, Mr. Press and Ms. Greenstein, dated December 26, 2001, indicated that Mr. Press requested that Ms. Greenstein work to resolve the problems with a web mail program and appellant's response was "It's all BS." In a January 9, 2002 email from appellant to Mr. Press, she requested a contractor be hired to assist her and further advised him that the project would not be done timely. In an email from Mr. Press to a New York staff dated March 15, 2002 he advised the staff to hold off on installing the patches on their computer system as requested by appellant. In a March 15, 2002 email from appellant to Mr. Press, she noted that she requested the New York office to apply a patch to their computer system; however, Mr. Press countermanded this request. Appellant expressed her dismayed with Mr. Press' actions and requested that he inform her of his intent to override her requests in the

future. An email from Ms. Greenstein to appellant on June 15, 2002 noted she was reassigned to the help desk as a result of providing testimony in an Equal Employment Opportunity complaint for appellant.

Appellant also submitted an undated memorandum from Ms. Greenstein to Mr. Johnston which advised that Ms. Greenstein requested a transfer to another division due to tension in the office. A statement from Ms. Greenstein dated April 26, 2002 indicated that appellant was her supervisor since 2000 and Mr. Press replaced appellant on October 2, 2001. She believed Mr. Press to be an inadequate manager with little experience in the position. Ms. Greenstein further noted that Mr. Press' work demands on appellant were unreasonable and added that he undermined appellant and prevented her from doing her job. A statement from Dwight Schmidt, a coworker, dated April 26, 2002, noted that appellant was a competent, conscientious worker, often working 12 to 14 hours per day and was doing the work of several people. A memorandum from Mr. Press to Ms. Greenstein dated May 30, 2002 noted that Ms. Greenstein was detailed to the help desk to fulfill a business need and provide timely and efficient support. Other statements from appellant dated May 7 and September 16, 2002 reiterated her allegations that she was overworked and subject to unreasonable deadlines which caused her escalating symptoms of stress.

Appellant submitted a report from Dr. Andrew Scott Dobin, a Board-certified internist, dated May 13, 2002, who treated appellant in the past for asthma, anxiety and depression. He noted that beginning November 1, 2001 appellant's asthma condition worsened and she experienced a panic attack in December 2001 which appellant attributed to extensive job-related stress, harassment and retaliation. Other reports from Drs. Hall and Vu dated October 3 to December 20, 2002 indicated appellant's continued treatment for glaucoma.

The employing establishment submitted a statement from Mr. Johnston dated April 17, 2002, who noted that some of appellant's coworkers found her difficult to work with and others respected her. He opined that appellant did not like to take direction from management, rather she preferred to determine what work needed to be performed and then inform management how and when she would perform the work. Mr. Johnston noted that appellant became angry when asked to perform work by management and on instances failed to provide work in a timely and complete manner. He advised that appellant did not like Mr. Press; however, his relationship with her was one of mutual respect. Mr. Johnston noted that appellant was a very knowledgeable and capable administrator; however, she could be brash with those who disagreed with her. He noted that Mr. Press associated well with contractor subordinates but had some difficulty associating with federal subordinates. Mr. Johnston advised that Mr. Press exceeded customer and management expectations and worked well with most people. He noted that appellant was given three months to complete the Novell project and that Mr. Press was responsive to her concerns. He noted that her claims of sabotage were unfounded. Mr. Johnston further advised that management actions were in accordance with employing establishment policy and procedures with regard to the issuance of the letter of reprimand and the proposal to suspend appellant. He noted that he did not oppose the letter of reprimand and believed the disciplinary action was fair. Mr. Johnston noted the letter was issued when appellant refused to provide Mr. Press with information that he requested multiple times and which he needed for the completion of the Novell migration project plan. He advised that the proposal to suspend was

not ultimately executed because of appellant's medical situation. Mr. Johnston advised that management reduced appellant's workload and allowed her to work at home based on her current medical restrictions.

In a decision dated February 19, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claimed emotional condition occurred in the performance of duty.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,² the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.³ 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 under the Act.⁴ When an employee experiences emotional stress in carrying out his employment duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁵ 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 under the Act.

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.⁶ If a claimant does implicate a factor of

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² 28 ECAB 125 (1976).

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁵ *Lillian Cutler*, *supra* note 2.

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

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.⁷

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated February 19, 2003, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegation that that she was wrongfully issued a letter of reprimand on November 19, 2001 and was unfairly given a proposal to suspend for 5 days on January 7, 2002, these relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ 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.⁹ 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 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.¹⁰ The evidence is insufficient to establish that the employing establishment erred or acted abusively in this matter. The letter of reprimand was issued on November 19, 2001 after Mr. Press requested a project plan for Novell migrations and appellant failed to timely provide the plan. Mr. Johnston, appellant's second-line supervisor, advised that management did everything in accordance with employing establishment policy and procedures with regard to the reprimand and proposed suspension. Mr. Johnston noted that appellant refused to provide Mr. Press with information that he requested multiple times and which he needed for the completion of the Novell migration project plan. He advised that the proposal to suspend was not executed because of appellant's medical circumstances. Mr. Johnston advised that management reduced appellant's workload and permitted her to work at home based on her medical restrictions.

With regard to appellant's allegation that management countermanded her instructions to the New York office regarding the installation of software patches, the Board has found that an employee's complaints concerning the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule,

⁷ *Id.*

⁸ 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).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹¹ Although appellant has made allegations that the employing establishment erred and acted abusively in these administrative and personnel matters, appellant has not provided evidence to substantiate such actions were in error, abusive or unreasonable in nature. The evidence is insufficient to show that the employing establishment acted unreasonably in its administrative capacity. Mr. Johnston explained the reasons the actions taken were appropriate under the circumstances. Appellant has not submitted sufficient evidence to establish that these administrative actions were erroneous or abusive. Consequently, appellant has not established a compensable factor pertaining to the issuance of the letter of reprimand, the proposed suspension or the countermanding of her instructions to the New York office.

Appellant also alleged that her emotional condition was due to being overworked and subject to unreasonable deadlines, specifically noting she was not given adequate time to resolve computer network problems or to plan and execute a complicated upgrade to the computer network. Regarding appellant's allegation that she was overworked, the Board had held that overwork may be a compensable factor of employment.¹² However, as with all allegations, overwork must be established on a factual basis.¹³ In this case, appellant has submitted insufficient evidence to support her contention that she was overworked and, therefore, this contention cannot be deemed a compensable factor of employment. Appellant submitted several emails sent between herself, her coworker, Ms. Greenstein, generally alleging that Mr. Press' work demands on appellant were unreasonable, he undermined her and prevented her from doing her job. Also submitted was a statement from Mr. Schmidt dated April 26, 2002 that noted that appellant often worked 12 to 14 hours per day and was doing the work of several people. However, specific instances of such work and the circumstances involved were not noted. Also, the employing establishment denied that appellant was overworked and explained that appellant did not like to take direction from management but preferred to determine what work needed to be done and then informed management how and when she would work. Mr. Johnston noted that appellant became angry when asked to perform work by management and on instances failed to provide work in a timely and complete manner. He noted that appellant was given three months to complete the Novell project and that Mr. Press was responsive to her concerns. Appellant has failed to provide sufficient evidence to establish her allegation that she was overworked by the employing establishment. Therefore, this contention cannot be deemed a compensable factor of employment.

Consequently, appellant has not established any compensable employment factors¹⁴ and she has not met her burden of proof in establishing her claim.

¹¹ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹² *Sherry L. McFall*, 51 ECAB 436 (2000).

¹³ *Id.*

¹⁴ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *Garry M. Carlo*, 47 ECAB 299 (1996).

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 February 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member