



## **FACTUAL HISTORY**

On September 18, 2001 appellant, then a 39-year-old patient services assistant (PSA) working in the primary care clinic,<sup>1</sup> filed an occupational disease claim alleging that her chronic sarcoidosis<sup>2</sup> was aggravated by stress at work on or before March 1, 2000 due to various employment factors, including harassment. In her claim form and other written statements submitted on December 18, 2001, appellant alleged that Vicky Trober, Chief of Primary Care and her second-level supervisor, “showed favoritism to white vs. people of color,” was extremely demanding, hostile and overbearing,<sup>3</sup> assigned her projects with little notice, abused her supervisory authority by giving appellant assignments directly rather than through her immediate supervisor<sup>4</sup> and gave her assignments that other PSAs were not performing. Appellant alleged that her job duties, such as rescheduling patient’s appointments, were stressful because the medical staff were often booked several months in advance, supervisors were sometimes not available to assist PSAs, she often had to work with difficult patients and there was a staff shortage. Appellant filed an Equal Employment Opportunity (EEO) Commission complaint against Ms. Trober<sup>5</sup> and feared that Ms. Trober would retaliate.<sup>6</sup>

In a December 3, 2001 statement, Ms. Trober denied that appellant’s workload increased in March 2000, with the exception that she sometimes took her turn covering the lead PSA’s position when he left. She stated that appellant’s position had a limited stress level and involved canceling and rescheduling patient’s appointments when a care provider called in sick, she was never required to work overtime and was compensated for her time when she did so. Ms. Trober indicated that appellant was not selected for the lead PSA position for which she had applied and her attitude then changed and she became uncooperative in performing her tasks and refused on numerous occasions to meet with her immediate supervisor or Ms. Trober.<sup>7</sup> Ms. Trober stated that several accommodations had been made for appellant to reduce her stress: she was allowed to work part time at home until she requested full-time work, was located in a separate area away from other PSAs and had a heater and fan at her desk. Ms. Trober indicated that appellant

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<sup>1</sup> Appellant’s job duties included scheduling patient’s appointments, providing reports to staff, locating records, retrieving computer data for staff and advising patients and the public regarding medical benefits. She was one of approximately 15 PSA clerks.

<sup>2</sup> Sarcoidosis is a chronic systemic reticulosis (abnormal increase in cells) of unknown etiology, involving almost any organ or tissue. DORLAND’S *Illustrated Medical Dictionary* (27<sup>th</sup> ed. 1988) at 1485.

<sup>3</sup> Appellant alleged that on September 20 2001 she returned to work with a medical release from her physician. She indicated that Ms. Trober had wanted to meet with her about her medical release and she “could not do it” and then Ms. Trober yelled at her and told her to go home.

<sup>4</sup> Appellant alleged that Ms. Trober “micro-managed.”

<sup>5</sup> There is no indication in the record as to the outcome of the EEO complaint.

<sup>6</sup> Appellant indicated that Ms. Trober was “vindictive and vengeful.”

<sup>7</sup> At the oral hearing, appellant’s representative stated that appellant refused to speak with her supervisors until a union steward was present.

completed her work assignments in a timely manner until July 2001,<sup>8</sup> at which time she did not complete her assignments as instructed and exhausted all her sick and annual leave. Appellant was granted advanced sick leave for a time and then was accommodated with a transfer to another position.

In an undated statement received by the Office on December 18, 2001, Terrie Jeans indicated that appellant sometimes seemed overwhelmed by her job duties that included contacting patients by telephone and rescheduling their appointments and she became physically and mentally stressed. She indicated that it required four employees to perform appellant's duties after she left.

Appellant submitted medical reports in support of her claim.

By decision dated May 6, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to any compensable factors of employment.

Appellant requested an oral hearing that was held on August 21, 2003. She testified that she began working for the employing establishment in 1990 and her job duties<sup>9</sup> included scheduling appointments for doctors and nurses but she often had difficulty locating doctors for all the patients needing treatment. Appellant handled private medical records and often had to deal with uncooperative and hostile patients, many of whom had serious illnesses and talk to grieving family members. She stated that her emotional condition improved when she changed jobs. Appellant's representative stated that her emotional condition was caused in part by conflict with her supervisor who harassed her and treated her unfairly, denial of a promotion and her job duties which were overwhelming and stressful.

By decision dated November 13, 2003, the Office hearing representative affirmed the May 6, 2002 decision.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>10</sup> provides for the payment of compensation benefits for injuries sustained in the performance of duty. To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>11</sup>

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<sup>8</sup> On July 2, 2001 the employing establishment advised appellant that she had not been selected for the lead PSA position.

<sup>9</sup> Appellant submitted a written job description at the hearing.

<sup>10</sup> 5 U.S.C. §§ 8101-8193.

<sup>11</sup> *George C. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1572, issued November 30, 2004).

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*,<sup>12</sup> the Board explained that there are distinctions in the type of employment situations giving rise to a compensable emotional condition under the Act. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>13</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from his or her 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup>

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 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.<sup>17</sup> Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act.<sup>18</sup> However, 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.<sup>19</sup>

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<sup>12</sup> 28 ECAB 125 (1976).

<sup>13</sup> *George C. Clark*, *supra* note 11.

<sup>14</sup> *Lillian Cutler*, *supra* note 12.

<sup>15</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>16</sup> *Id.*

<sup>17</sup> *Lillian Cutler*, *supra* note 12.

<sup>18</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>19</sup> *Charles D. Edwards*, 55 ECAB \_\_\_\_ (Docket No. 02-1956, issued January 15, 2004).

## ANALYSIS

Appellant alleged that Ms. Trober assigned her projects with little notice, abused her supervisory authority by giving her assignments directly rather than through her immediate supervisor and gave her assignments that other PSAs were not performing. However, the assignment of work duties is an administrative or supervisory function. As noted above, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act absent error or abuse. Although appellant alleged that Ms. Trober acted abusively in the way in which she assigned duties to her and "micromanaged," there is insufficient evidence to support appellant's allegations. She provided insufficient details such as dates of incidents or what specifically occurred, as in the example of the allegation that she was assigned projects with too little notice, to establish any error or abuse in Ms. Trober's handling of job assignments. Appellant did not explain how it was abusive for Ms. Trober to assign projects to her directly rather than through her immediate supervisor or to assign her tasks that other PSAs did not perform. As no error or abuse on the part of the employing establishment has been established, this administrative matter is not deemed a compensable factor of employment.

Appellant alleged that the denial of a promotion contributed to her emotional condition. However, the Board has 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 his or her regular or specially assigned work duties, but rather constitute her desire to work in a different position.<sup>20</sup> Thus, she has not established a compensable employment factor under the Act in this respect.

Appellant alleged that she was harassed and discriminated against by Ms. Trober. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from their performance of his or her regular duties, these could constitute employment factors.<sup>21</sup> However, for harassment and 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.<sup>22</sup> Although appellant alleged that Ms. Trober harassed and discriminated against her by "showed favoritism to white vs. people of color," was extremely demanding, hostile and overbearing and she feared retaliation from Ms. Trober because she had filed an EEO complaint, there is insufficient evidence to support these allegations. For example, there is no final decision of record regarding appellant's EEO complaint or other objective evidence to support her allegations of harassment or discrimination. She alleged that on September 20, 2001 Ms. Trober yelled at her and told her to go home. However, appellant indicated that Ms. Trober had wanted to meet with her about her medical release on that date and she did not feel able to handle a meeting with her. At that point Ms. Trober told her to go home. Even if Ms. Trober yelled at appellant as she alleged, there is

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<sup>20</sup> See *William P. George*, 43 ECAB 1159 (1992).

<sup>21</sup> *Id.*

<sup>22</sup> *Donna J. DiBernardo*, 47 ECAB 700 (1996).

insufficient evidence to establish that this incident rose to the level of harassment. Because there is insufficient evidence to establish any acts of harassment, discrimination or retaliation by the employing establishment, these allegations cannot be deemed compensable employment factors.

Appellant also alleged that her job duties contributed to her stress. Although the Office stated that she did not allege until the hearing on August 21, 2003 that her job duties contributed to her emotional condition, the record shows that in statements submitted on December 18, 2001 appellant alleged that her job duties such as rescheduling patient appointments were stressful because the medical staff were often booked several months in advance, supervisors were sometimes not available to assist PSAs, she often had to work with difficult patients and there was a staff shortage. In a written statement, Ms. Jeans stated that appellant sometimes seemed overwhelmed by her job duties which included contacting patients by telephone and rescheduling their appointments and she became physically and mentally stressed. She indicated that it required four employees to perform appellant's duties after she left. This witness statement lends support to appellant's allegation that her job duties contributed to her emotional condition. The Board finds that this case requires further development on the issue of whether these alleged duties constituted compensable factors of employment. The Office did not specifically address these alleged factors of employment and make findings of fact regarding these alleged factors. On remand the Office should conduct such further development as it deems necessary. If the Office finds that any of appellant's job duties constitute a compensable factor of employment, it should then review the medical evidence to determine whether her emotional condition was caused or aggravated by these factors.

### **CONCLUSION**

The Board finds that this case requires further development on the issue of whether any of appellant's job duties constitute compensable employment factors.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 13, 2003 is set aside and the case is remanded for further action consistent with this decision

Issued: March 22, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
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