

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

SUZANNE M. WHEELER, Appellant)	
)	
and)	Docket No. 05-1227
)	Issued: May 22, 2006
DEPARTMENT OF THE AIR FORCE, AIR FORCE ACADEMY, Colorado Springs, CO, Employer)	
)	
)	

Appearances:
Suzanne M. Wheeler, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 17, 2005 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated September 28, 2004 and February 16, 2005 which denied her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to compensable factors of her federal employment.

FACTUAL HISTORY

On December 18, 2002 appellant, then a 50-year-old English instructor, filed an occupational disease claim alleging she sustained an emotional condition due to factors of her federal employment. She stopped work on November 15, 2002 for symptoms of anxiety and depression. Appellant attributed the development of her condition to a November 13, 2002

deadline for entering a certain percentage of student grades, undue pressure and not being consulted of departmental changes. In a supplemental statement, appellant attributed her condition to management of the USAF preparatory school by Lieutenant Colonel John Higgs, the academic dean.

In a November 11, 2002 statement, appellant alleged discrimination at the school. She noted being well qualified for the interim English Department head position which became available with the September 23, 2002 resignation of Dr. Ralph Millis. Appellant stated that Lieutenant Colonel Higgs did not consult with her when Dr. Millis resigned and noted that she had performed most of the work of the head for the prior year. She indicated that Lieutenant Colonel Higgs filled the position with a male military member and alleged gender discrimination. Appellant provided information about several other civilian female instructors who were passed over or not hired at the school. She alleged that the staff shortage created stress.

In a note dated November 27, 2002, Dr. Timothy E. Hoke, a family practitioner, stated that he recently treated appellant for “a constellation of physical symptoms related to situational anxiety.” He recommended that she refrain from working November 15, 2002 and return to work on January 3, 2003.

In statements of December 18, 2002 and February 11, 2003, appellant further described factors giving rise to her condition. On November 15, 2002 she became anxious and depressed about being demanding on her subordinates as she was not consulted in certain decision making at the school. Appellant stopped work and described her medical treatment. Listed as causing her illness were: micromanagement by the academic dean, lack of communication in the department and disregard for the core values of the school, with a focus on grades rather than on learning. Appellant noted that Lieutenant Colonel Higgs had taken 40 student research papers to read and evaluate himself rather than accepting the judgment of the English Department. She alleged clandestine meetings to circumvent the department head where teachers were instructed to provide easier high grades. Appellant claimed a communication between a dean and some of the staff had excluded her and resulted in a colleague having more knowledge than she did about certain course directives and elimination of a literature text from the curriculum.

Appellant described staffing problems at the beginning of the academic year and the resignation of two members of the department and that inexperienced staff placed an extra burden on her to see students for extra instruction. She stated that several instructors did not hold English degrees and she felt ignored, abhorred and insignificant. On September 24, 2002, after the resignation of Dr. Millis, appellant assumed responsibilities as a course director and directing novice teachers. She noted that she did not follow through in filing an Equal Employment Opportunity complaint and identified several family members with serious health issues.

In a February 13, 2003 report, Dr. Joyce E. Michael, an osteopath, noted that appellant began treatment with Dr. Hoke on November 27, 2002, but that he died in January 2003 and she took over medical management. Dr. Michael diagnosed depression and anxiety and noted symptoms as not being able to get out of bed, crying uncontrollably, and being unable to sleep.

She noted that appellant had returned to work on January 3, 2003. Dr. Michael stated that, since appellant had no prior history of anxiety or depression, the cause of her condition was the stress of her work. She noted appellant had to deal with inadequate staff and the pressures of deadlines.

On February 19, 2003 Lieutenant Colonel Higgs responded to appellant's allegations. He noted that the English Department consisted of six permanent employees, a temporary employee and three recent graduates from the Academy. Lieutenant Colonel Higgs acknowledged that Dr. Millis was absent for significant periods of time during the 2001 and 2002 academic year and that appellant had to assume greater responsibilities. He noted that great educational experimental variability existed within the department and he worked with the reading/study skills teachers to develop a new course which continued to evolve. Lieutenant Colonel Higgs stated that he took over as interim head of the English Department pending the arrival of the new head. He noted that the preparatory school adopted the Academy's academic calendar for the present school year, including the policy that 35 percent of graded work be completed by the midpoint of the grading season. However, Lieutenant Colonel Higgs discovered the department laboring to meet this requirement in November 2002 and it was relaxed. He described staffing shortages as a way of life and that the level of experience among the departmental staff did require additional supervision and structure. Lieutenant Colonel Higgs recognized that appellant sometimes worked evenings and weekend hours and received compensatory time; however, additional work outside the normal work week was not required. Appellant did teach two sections during the second quarter while assuming the role of course director, as the new department head was transitioning into position. Lieutenant Colonel Higgs noted that there were no problems with appellant's performance or conduct.

The Office prepared a statement of accepted facts delineating between those factors found compensable as arising out of the performance of duty and those which were denied as noncompensable or not accepted as having occurred as alleged. The Office accepted that appellant's department was short staffed at the start of the academic year and that two employees resigned. Her work duties increased as the department head was absent for much of the 2001 and 2002 school term and she had to supervise inexperienced teaching staff. The grading deadline imposed for the academic term was found to be unreasonable. The Office found as noncompensable factors the fact that the administration did not consult with appellant before making changes, the fact that she did not agree with some of the changes imposed by the academic dean and that she did not regularly take work home to meet deadlines. Certain allegations were not accepted as having occurred as alleged, including that the employing establishment did not value or appreciate appellant; that the administration had disregarded the core values of the school, compromised appellant's integrity or circumvented the faculty; that another instructor had criticized the school and pressured her to make changes; or that gender discrimination had been established. The Office noted that appellant was disabled for work from November 15, 2002 to January 13, 2003 and listed her medical providers.¹

¹ Appellant was also seen on December 5, 2002 by Craig A. Engle, a psychiatric social worker, who is not a physician under the Federal Employees' Compensation Act and, therefore, his findings were not considered to be probative medical evidence. Licensed Clinical Social Workers or Psychiatric Social Workers are not considered to be physicians and their opinions have no probative medical value. See *Frederick C. Smith*, 48 ECAB 132 (1996); *Debbie J. Hobbs*, 43 ECAB 135 (1991).

On September 23, 2003 the Office referred appellant, together with the statement of accepted facts and specific questions to be addressed to Dr. Michael S. Shrift, a Board-certified psychiatrist. In an October 9, 2003 report, he provided a review of the medical records, appellant's treatment and reviewed the findings of the Office, including an increased workload. Dr. Shrift noted that appellant stopped work on or about November 15, 2002 for mental health reasons and had returned to duty. Prior to this period, appellant had no mental health treatment or history of physical or sexual abuse. After that day, she began weekly psychotherapy with a licensed clinical social worker and was started on medication by her physician. Dr. Shrift stated that appellant met the diagnostic criteria for a single episode depressive disorder in partial remission. He described occasional suicidal ideation but considered any immediate risk as low and eliminated the criteria for post-traumatic stress disorder from any events at work. Dr. Shrift also eliminated the conditions of mania, hypomania, panic disorder or obsessive-compulsive disorder. He described appellant's activities of daily living, noting that she taught from 8:00 a.m. to 11:00 a.m., graded papers after lunch and tutored students. On nonteaching days she prepared lesson plans, held meetings and attended to administrative tasks. Dr. Shrift also described appellant's activities at home, noting that she had many concurrent stressors pertaining to the death and illness of several family members. On mental status examination appellant's affect was described as somewhat flat, but overall jovial and interactive. She was found without psychotic mentation and described as quite bright. There were no attention, concentration or memory deficits. Appellant was fully oriented and able to follow all verbal and written commands. He diagnosed major depressive disorder, single episode, in partial remission, with currently moderate psychosocial stressors.

Dr. Shrift noted that the statement of accepted facts accepted an increased workload, but found that appellant's depression was not caused or aggravated by the compensable factors of employment accepted by the Office. He stated that she described the way she was not involved in decisions about staffing and her concern over the quality of staff, but these were not within the accepted factors. Dr. Shrift noted that appellant had several close family members with terminal illnesses and this clearly contributed to her depressive disorder. An increase in workload was not associated with the diagnosed condition. Dr. Shrift found no psychiatric restrictions attributable to appellant's condition and reiterated that her period of disability was not due to the accepted factors listed in the statement of accepted facts.²

In a November 18, 2003 decision, the Office denied appellant's claim. It found that the weight of medical evidence was represented by the report of Dr. Shrift.

On December 17, 2003 appellant requested a hearing before the Branch of Hearings and Review, which was held on July 19, 2004. She submitted additional evidence. In a note dated July 7, 2004, Dr. David U. Caster, a Board-certified psychiatrist, indicated that he had evaluated appellant on February 23, 2003 for "a very serious mental deterioration following a conflict at work." This resulted in appellant being suicidal and homicidal in November, for which she was treated by her primary care physician. Dr. Caster stated: "It does appear, at this point in time,

² Appellant's sister-in-law died on June 26, 2003, her brother-in-law had Hodgkin's disease and her stepfather died in hospice from congestive heart failure. Her younger brother and possibly her niece had likely substance abuse problems.

that you are doing better; however, it is clear that the deterioration that you have experienced since November 2002 was related to a conflict at work.” Appellant submitted another statement reiterating her allegations.

By decision dated September 28, 2004, the hearing representative affirmed the November 18, 2003 decision.

On November 19, 2004 appellant, through her representative, requested reconsideration of the September 28, 2004 hearing representative’s decision. In a report dated December 20, 2004, Dr. Michael noted that appellant was treated by Dr. Hoke following November 15, 2002. Her diagnosis was situational anxiety, moderate to severe. Dr. Michael observed that appellant cried, did not sleep well and had trouble functioning at work. Appellant was advised to stop work and pursue further medical testing. Dr. Caster continued with appellant’s treatment for several endocrinology conditions. Dr. Michael noted that she had not placed any restrictions on appellant’s work other than being off from November 15, 2002 to January 3, 2003.

By decision dated February 16, 2005, the Office denied modification of the September 28, 2004 decision.

LEGAL PRECEDENT

To establish an emotional condition sustained in the performance of duty, a claimant must submit the following: (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 or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion derived from clinical findings on examination, on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee and found compensable by the Office.⁴

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an individual’s employment. There are many situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers’ compensation. These injuries occur in the course of employment and have some kind of causal connection with it, but are not covered because they do not arise out of or in the course of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act.⁵ Generally speaking, when an employee

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 3.

⁵ 5 U.S.C. § 8101 *et seq.*

experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁶ Conversely, if the employee's emotional reaction stems from employment matters which are not related to her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁷

Noncompensable factors of employment include administrative and personnel actions which are matters, not considered arising in the performance of duty.⁸ Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. However, to the extent that 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 factor.⁹ However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, an emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.¹⁰

Verbal altercations, name calling or difficult relationships with supervisors in the workplace may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language which is otherwise unusual or not encountered as a norm of the employment.¹¹ An employee's charges that he or she was harassed or discriminated against are not determinative of whether harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.¹²

ANALYSIS

The Office accepted several compensable employment factors as arising in the course of appellant's regular and specially assigned job duties under *Cutler*. It accepted that her department became short staffed and that Dr. Millis was absent for significant periods in 2001 and 2002 which gave rise to additional duties and responsibilities being assumed by appellant in

⁶ *Donna Faye Cardwell*, *supra* note 3; *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Id.*

⁸ *See Joseph DeDonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁹ *See James P. Guinan*, 51 ECAB 604 (2000).

¹⁰ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

¹² *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

addition to her regular teaching requirements. This included overseeing several more inexperienced teachers within the department and meeting students for extra instruction. In addition, the grading deadline imposed on the 2002 academic term was found unreasonable.

With regard to her other allegations, the Office found that appellant did not submit sufficient evidence of error or abuse to find that administrative actions of which she complained constituted compensable work factors. These included changes Lieutenant Colonel Higgs made to the curriculum within the department, his review and evaluation of 40 student research papers and the lack of any consultation on certain academic matters. While appellant contended that Lieutenant Colonel Higgs, as Academic Dean should accept the judgment of the English Department staff, she did not submit evidence to establish error or abuse in how he handled these matters. Her opinion that certain instructors lacked the proper academic credentials to teach at the school was not supported by probative and reliable evidence. At best, this merely reflects appellant's disagreement with how Lieutenant Colonel Higgs exercised his discretion as academic dean. The assignment of work is recognized as an administrative function of the employer and absent error or abuse does not constitute a compensable factor or employment.¹³ Appellant's complaints concerning the manner in which the academic dean performed his duties or exercised his discretion fall outside coverage of the Act absent evidence of error or abuse.¹⁴

Appellant alleged a pattern of gender discrimination at the Academy preparatory school but did not submit sufficient evidence to support her contentions. She noted being passed over for the position of interim head of the English Department upon the departure of Dr. Millis. The Board has held that disabling conditions resulting from an employee's desire for a different job or feeling of job insecurity arising from not receiving a promotion are not compensable factors.¹⁵ In these cases, the feelings are considered to be self-generated as they arise from situations which are not related to his or her assigned job duties. Appellant's perceptions of not feeling valued or appreciated and that the academic dean undermined the core values of the school are somewhat vague but similarly based on matters not pertaining to her regular or specially assigned job duties. Rather, Lieutenant Colonel Higgs described her as a conscientious employee who assumed additional responsibilities during the 2002 academic term by teaching two sections while assuming the role of a course director. The evidence submitted to the record is not sufficient to establish discrimination as alleged.

The weight of the medical opinion evidence of record is not sufficient to establish that appellant's disability for the period November 15, 2002 to January 3, 2003 was causally related to the factors found compensable by the Office. The Board has held that, in assessing the weight of medical opinion evidence, the number of physicians supporting one position or another is not controlling; rather, the weight of such evidence is determined by its reliability, its probative value and its convincing quality.¹⁶ The factors that comprise the evaluation of medical evidence

¹³ See *Karen K. Levene*, 54 ECAB671 (2003).

¹⁴ See *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁶ See *Joan F. Burke*, 54 ECAB 406 (2003).

include the opportunity for and the thoroughness of the physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. To be of probative value, the medical evidence must be based on a complete factual and medical background with an accurate history of the employee's employment factors and an explanation of how the claimed condition is related to his or her employment.¹⁷

In a November 27, 2002 notation, Dr. Hoke, an attending family practitioner, indicated that he had recently treated appellant for "a constellation of physical symptoms related to situational anxiety. This seems to be a work-related situation." He suggested that she stop work for the period November 15, 2002 to January 3, 2003. Dr. Hoke did not provide any review of appellant's medical history or appear to provide a firm diagnosis of her condition. He did not list any findings on examination, merely a brief note which stated that appellant's condition seemed to be work related. Dr. Hoke did not provide any discussion of those aspects of her employment which gave rise to her anxiety. As such, this report is of diminished probative value on the issue of causal relationship.

The February 13, 2003 report of Dr. Michael, an osteopath, noted that she assumed appellant's treatment following the death of Dr. Hoke in January 2003. She reviewed her treatment and indicated that Dr. Hoke had diagnosed a moderate to severe situational anxiety for which appellant received medication. Appellant was first seen by Dr. Michael on January 13, 2003 for complaints of crying and sleeplessness. She stated that appellant's medications were continued pending reevaluation. Dr. Michael listed her symptoms on a February 13, 2003 examination. She stated that, since appellant had not prior history of anxiety or depression, the cause of her current condition was due to the stress of her work. The Board finds that this report is of diminished probative value. Dr. Michael relied extensively on the diagnosis provided by Dr. Hoke which, as noted, was not supported by a thorough medical report or statement on the issue of causal relationship. Although she noted that appellant had been burdened by extra duties with inadequate staffing, Dr. Michael did not provide explanation for her stated conclusion on causal relationship. There was no history provided or discussion of other stressors arising outside of work that could give rise to appellant's condition. Further, Dr. Michael did not discuss her background as a medical specialist providing treatment in the field of psychology. The bulk of this report consists of a discussion of the medications provided to treat appellant. The report relies a great deal on reference to reports of Dr. Hoke, without sufficient medical reasoning to support her disability for the claimed period. For this reason, the report of Dr. Michael is of diminished probative value.

The Office referred appellant for examination by Dr. Shrift, a Board-certified psychiatrist. In an October 9, 2003 report, he addressed the statement of accepted facts, noting the factors accepted by the Office as compensable. He reviewed her medical history, noting no prior treatment for mental health problems prior to November 15, 2003. On mental status evaluation, he noted that there were no attention, concentration or memory deficits and that appellant was fully oriented and followed all verbal and written commands. Dr. Shrift eliminated any criteria for post-traumatic stress disorder, mania, panic disorder or obsessive-

¹⁷ See *Tomas Martinez*, 54 ECAB 623 (2003).

compulsive disorder. He provided a diagnosis of major depressive disorder, single episode, in partial remission and noted that she had returned to teaching, describing her activities of daily living. Dr. Shrift noted that there were other stress factors arising outside appellant's work due to serious health issues involving close family members. Based on his examination, Dr. Shrift concluded that appellant's depression was not caused or aggravated by the accepted *Cutler* factors regarding her regular or specially assigned work duties. Rather, he noted that she expressed being not involved in certain decisions about staffing and a concern over the quality of the staff, matters which were not accepted as compensable work factors. He concluded that appellant's disability from November 15, 2002 to January 3, 2003 was not due to the factors listed as accepted by the Office. The Board finds that the report of Dr. Shrift constitutes the weight of medical opinion. His report was based on an accurate history and medical background of the case and with reference to the factors accepted by the Office as arising within the performance of duty. He listed a diagnosis based on mental status examination and explained the basis for this conclusion and the elimination of other possible conditions. Dr. Shrift reported a thorough examination of appellant and found that her depressive condition was attributable to factors not pertaining to her regular and specially assigned work duties but to her concern about certain administrative and staffing decisions and the quality of other staff working within the English Department.

Following receipt of this report, appellant submitted the July 7, 2004 note of Dr. Caster, also a Board-certified psychiatrist. He acknowledged the brief nature of his note, stating that when he had evaluated her on February 23, 2003 for "a very serious mental deterioration following a conflict at work," resulting in suicidal and homicidal ideation. The Board notes that this brief notation by Dr. Caster provides no medical or psychological history or background of the case or any discussion of a psychiatric diagnosis. There is vague reference to "the seriousness of your disorder," without adequate explanation for how the physician concluded appellant's deterioration or disability since November 2002 were related to "a conflict at work." This report fails to provide a well-rationalized opinion on the issue of causal relationship. Similarly, the December 20, 2004 report of Dr. Michael essentially reiterated her prior statements and addressed appellant's continuing treatment. There is insufficient discussion of how appellant's disability for the period November 15, 2002 to January 3, 2003 was caused or aggravated by the compensable factors found by the Office.

CONCLUSION

The Board finds that appellant has not established an emotional condition arising from the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 16, 2005 and September 28, 2004 be affirmed.

Issued: May 22, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board