

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

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**K.G., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Dublin, GA, Employer**

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**Docket No. 07-1687  
Issued: February 21, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 11, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 16, 2007 denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 17, 2006 appellant, then a 47-year-old medical clerk, filed an occupational disease claim alleging that on May 16, 2006 she first realized that her stress and anxiety was due

to the stress and pressures of performing two jobs. She stopped work on May 17, 2006 and did not return.<sup>1</sup>

In a May 17, 2006 duty status report, Jack M. Gibbs, a physician's assistant, diagnosed adjustment disorder and excessive job stress, which he attributed to the pressure of performing two jobs. He indicated that appellant was unable to perform the duties of her position due to her medical condition.

By letter dated June 8, 2006, the Office asked appellant to submit evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. She was advised as to the type of medical evidence required to support her claim.

On June 27, 2006 the Office received medical and factual information. In a February 7, 2006 memorandum, appellant notified her supervisor that the workload for Wards 19A and 19B had "become too difficult for one clerk to maintain efficiently." She specified instances as to why working both wards required more than one clerk.

On May 17, 2006 Mr. Gibbs diagnosed depressive disorder and recommended that appellant be "given a 45-day respite leave." Appellant related having to perform "two jobs with only four hours for each." While performing one job, she was "getting pressure from the other job to do things needed for that job."

On May 17, 2006 Dr. Anurupa Damineni, an employing establishment physician, diagnosed depression and noted that appellant related experiencing work stress.

On June 19, 2006 Mr. Gibbs repeated the diagnosis and noted that he had consulted with Roy R. Cook, Ph.D., director, mental health.

In a May 19, 2006 duty status report (Form CA-17), Dr. Jose L. Balbona, an employing establishment physician, diagnosed work-related stress. He stated that appellant "has been on leave for 30 days." In response to question 14 on the form, Dr. Balbona noted that appellant stated that "she is unable to take the stress she describes."

In a June 20, 2006 duty status report (Form CA-17), Dr. Sandra Souza, a treating Board-certified family practitioner, diagnosed clinical depression which she attributed to appellant's work. She noted that appellant was working two jobs since August 2005. In a June 20, 2006 letter, Dr. Souza requested that appellant be excused from work for medical reasons beginning that date.

On June 23, 2006 the employing establishment responded to appellant's claim. Lee Ladson, RN, nurse manager of Ward 19B, disputed appellant's assertion that her job was stressful. She noted that overtime was not expected and that appellant "was allowed to prioritize her work concerning medical records with little supervisory direction required." Ms. Ladson

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<sup>1</sup> Appellant was approved for disability retirement by the Office of Personnel Management on November 20, 2006.

noted that, after appellant had indicated that her work was stressful in a February 7, 2006 memorandum, the employing establishment allowed her “to perform only critical tasks after self-prioritizing such tasks.” As to the remaining tasks of appellant’s job, she stated that “a significant amount of clerical duties including even some of the critical tasks were performed by nursing staff.” Ms. Ladson noted that there were staffing shortages. She related that appellant had been issued a notice of potential disciplinary action on May 16, 2006 for rude and disrespectful comments and for a two-hour unauthorized absence from her work.

In a June 23, 2006 memorandum, Anda Wilcher, nurse manager of Ward 19A noted that appellant had been functioning as a medical clerk since 2001 and was not under her direct supervision. She noted that the job was not stressful and appellant was able “to prioritize her work concerning medical records with little supervisory direction required.” Ms. Wilcher stated that there had been no staffing shortages or extra demands which would have affected appellant’s workload and she was only required to work four hours in her unit.

On July 11, 2006 appellant again attributed her emotional condition to her work as a clerk for two wards on different floors.<sup>2</sup> She had to complete eight hours of work in four hours for each ward and found it difficult using the stairs to go from one ward to the other. Following hurricane Katrina, Ward 19B’s patient population increased to capacity with patients as well as spouses being accommodated. Appellant expressed her concerns about the increased work to Ms. Ladson and requested help. She alleged that the nurses left work for her to do the following day that they could have done. Appellant also voiced her concerns to both Sylvia Kersey, nurse executive, and Catherine Forrest, RN, assistant nurse director. She stated that Ms. Wilcher had been understanding about her work concerns, but Ms. Ladson added to her stress. Appellant alleged that Ms. Ladson verbally scolded her for taking the time books delivered to Ward 13B in addition to the time books for wards 19A and 19B. She noted that, as she had to pass by 13B, it saved her time by taking all the books to the other side of the hospital at one time. Appellant then alleged that Ms. Ladson treated her as a child and frequently checked up on her. She alleged that Ms. Ladson called her frequently while she was working on Ward 19A instead of writing nonemergent needs in a spiral notebook that she placed at each nurses’ workstation. Appellant had to complete charts within three days of discharge and supplies had to be entered in the computer by noon in order to get the supplies the next day. She alleged that the employing establishment did not provide her with adequate tools, office space, equipment or training. Appellant first experienced anxiety on May 15, 2005 when she went to a file room. She found it difficult to find time to go to the file room to pull charts, place items and refile the charts due to the “nature of working two wards [four] hours a day.” On that day, Ms. Ladson was rude to appellant when she inquired why it took her an hour and a half to work in the file room. Appellant informed Ms. Forrest that she was experiencing stress. On May 16, 2005 Ms. Ladson informed appellant by e-mail that she wanted to counsel her. On May 17, 2006 appellant was taken to the employing establishment health clinic. She detailed past incidents of alleged discrimination beginning in 1992 and ending in 2000. In 1995 appellant was harassed at work and there were rumors that she was a bad nurse. In 2000 she alleged that a coworker yelled at her when a tube she was using broke. Appellant alleged that coworkers used her computer to

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<sup>2</sup> Appellant submitted a letter from the Office accepting her claim for recurrent depression. The file number was 06-0724558 and the date of injury was noted as March 19, 1999.

surf the net and sat in her chair when she was away from her desk. She locked her computer but was scolded for doing so. Appellant was reprimanded and suspended in January 2005 for an incident in October 2004 when she went to the post office to mail something and was harassed by coworkers. She filed a claim for the October 2004 incident which was denied.

In duty status reports dated July 17 and August 14, 2006, Dr. Souza noted clinical work-related stress and emotional disorder under describing how the injury occurred. She found that appellant was currently unable to work due to depression.

In a May 23, 2006 report, Dr. Earl N. Mullis, a surgeon, diagnosed stress and “significant health issues that I think are triggered by her stress.” He opined that appellant’s work stress contributed to her complaints and recommended approval of her disability retirement application.

On June 26, 2006 Dr. Olubansile A. Mimiko, a psychiatrist, diagnosed severe recurrent depression without psychotic features and generalized anxiety disorder with panic attacks. He noted that the precipitating event for appellant’s depression occurred in 1992 when her daughter was molested by a patient’s relative. Dr. Mimiko stated that she broke down while on the job on May 16, 2006 due to severe depression and anxiety. On July 10, 2006 he repeated his diagnoses.

On July 18, 2006 Dr. Souza noted that appellant was first treated for depression on June 20, 2006. She opined that appellant had significant health issues triggered by work. Dr. Souza supported appellant’s application for a medical disability. On September 28, 2006 she repeated her findings.

On March 27, 2007 the Office referred appellant for a second opinion evaluation.<sup>3</sup> On April 20, 2007 Dr. Dinesh M. Doshi, a Board-certified psychiatrist, reviewed the statement of accepted facts, medical history and work history. Following examination of appellant, he diagnosed depressive disorder and generalized anxiety disorder. Dr. Doshi opined that appellant’s emotional status was not caused by her work duties on the two wards. He noted, however, that her depressive symptoms may have been aggravated due to work-related conditions. Appellant also stated that she was harassed at work, which the Office did not accept. Dr. Doshi noted that, as the alleged harassment had not been substantiated by the statement of accepted facts, he could not “state that the diagnosed condition is caused or aggravated by the factor of employment.” He noted that appellant’s depression began in 1992 and she had been in treatment since then. While noting that her condition was aggravated by the accepted employment factor, Dr. Doshi opined that any such aggravation was temporary. He noted that she was still being treated one year following her removal from the workplace.

By decision dated May 16, 2007, the Office denied appellant’s claim on the grounds that she failed to establish that her medical condition was causally related to the accepted employment factor. The Office found that appellant established an increased workload as a compensable factor. As to her allegations regarding her suspension, harassment and other incidents, the Office found the record insufficient to establish them as compensable factors.

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<sup>3</sup> The Office accepted as a compensable factor that appellant was assigned to work on two different wards and listed her duties and increased workload.

## LEGAL PRECEDENT

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>4</sup>

Appellant also alleged that she had been reprimanded and suspended in January 2005 for an incident in October 2004 when she went to the post office to mail something and was harassed by coworkers. She noted that she had filed a claim for the October 2004 incident which was denied.

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>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> When an employee experiences emotional stress in carrying out her employment duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of an in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>8</sup> 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. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>9</sup> 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>10</sup>

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<sup>4</sup> *Doretha M. Belnavis*, 57 ECAB \_\_\_\_ (Docket No. 05-1879, issued January 12, 2006); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> 28 ECAB 125 (1976).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> See *Robert Breeden*, 57 ECAB \_\_\_\_ (Docket No. 06-734, issued June 16, 2006); *Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>8</sup> *Lillian Cutler*, *supra* note 5.

<sup>9</sup> *Vitaliy Y. Matviiv*, 57 ECAB \_\_\_\_ (Docket No. 05-1328, issued October 26, 2005).

<sup>10</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, *supra* note 5.

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>11</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>12</sup>

### ANALYSIS

The Board finds that appellant has failed to establish that her emotional condition was causally related to factors of her federal employment. The Office accepted as a compensable factor that appellant was overworked.

Appellant generally alleged that she was harassed by Ms. Ladson and by a coworker in 1995. The harassment by Ms. Ladson included being verbally scolded for taking the time books delivered to Ward 13B in addition to the time books for Wards 19A and 19B, being treated as a child, and frequently being called for nonemergency needs while working on Ward 19A. Ms. Ladson also alleged frequently checking up on appellant to ensure she was where she said she would be. The most recent incident with Ms. Ladson occurred on May 15, 2005 when appellant went to the file room and Ms. Ladson asked why it took her an hour and half in the file room. Appellant interpreted Ms. Ladson's questioning of her to be rude and disrespectful. With respect to the 1995 incident, she stated that she was harassed at work and there were rumors that she was a bad nurse. The mere disagreement or dislike of a supervisory or management action is not compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>13</sup> A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive.<sup>14</sup> Appellant submitted no evidence such as witness statements to establish that she was treated in an inappropriate manner by Ms. Ladson or that she was harassed in 1995. She has failed to establish harassment as a compensable factor of employment.

Appellant alleged various incidents involving coworkers. In 2000 she alleged that a coworker yelled at her when a tube she was using broke. Currently, appellant alleged that coworkers would use her computer to surf the net and sit in her chair when she was away from her desk so she locked her computer and was allegedly scolded for doing this. The record

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<sup>11</sup> See *V.W.*, 58 ECAB \_\_\_\_ (Docket No. 07-234, issued March 22, 2007); *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>12</sup> *L.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-1263, issued May 3, 2007).

<sup>13</sup> *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>14</sup> *Michael A. Deas*, 53 ECAB 208 (2001).

contains no evidence substantiating her allegations regarding incidents with her coworkers. Moreover, appellant did not provide specific dates as to when these alleged incidents occurred. As she failed to submit any supporting evidence such as witness statements, she has failed to establish a compensable factor of employment.

Next, appellant alleged that the employing establishment failed to provide her with adequate tools, office space, equipment or sufficient training to perform her duties. She also alleged that she was improperly reprimanded and suspended in January 2005 for an incident in October 2004 and improperly issued a notice of potential disciplinary action on May 16, 2006. The Board finds that these allegations concern administrative or personnel matters unrelated to his regular or specially assigned work duties and do not fall within coverage of the Act as there is no evidence to show that the employing establishment committed error or abuse in this case.<sup>15</sup> Reactions to disciplinary matters, such as letters of warning or suspensions are not compensable unless it is established that the employing establishment acted abusively in such capacity.<sup>16</sup> There is no evidence besides appellant's statement regarding the January 2005 reprimand and suspension or her contention that she was provided with inadequate tools, office space, equipment or sufficient training. Ms. Ladson noted that she issued appellant a notice of potential disciplinary action on May 16, 2006 and that appellant has not submitted any evidence showing how Ms. Ladson was acting abusively. With respect to the inadequate office space, tools, training and equipment, appellant has not provided specific details showing how the employing establishment failed to provide her with the training, tools or space required to perform her job. She has not established a compensable factor of employment under the Act with respect to the disciplinary actions.

As appellant established one compensable factor of employment, *i.e.*, that she was overworked, the medical evidence may be reviewed with respect thereto.<sup>17</sup> The Board finds the medical evidence of record insufficient to establish that her emotional condition was caused by her federal employment. In various reports, Mr. Gibbs diagnosed depressive disorder and opined that appellant was totally disabled. However, the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a physician as defined by section 8101(2) of the Act.<sup>18</sup> The record also contains reports from Drs. Damineni, Balbona, Mullis, Mimiko and Souza, who all noted appellant's report of work stress and diagnosed depression. However, none of the physicians addressed the accepted factor that the equipment would be unavailable. Moreover, none of the physicians addressed the cause of appellant's condition. As stated above, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>19</sup>

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<sup>15</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>16</sup> *Joe M. Hagewood*, 56 ECAB 479 (2005).

<sup>17</sup> *See Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>18</sup> *See* 5 U.S.C. § 8101(2); *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>19</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

Dr. Doshi provided a second opinion evaluation for the Office. He reviewed the statement of accepted facts, including the accepted employment factor, medical records and appellant's complaints of job-related harassment. Dr. Doshi diagnosed depression and advised that this was not related to the accepted employment factor and noted that the alleged harassment by her supervisor, which appellant implicated, was not substantiated by the record. The Board has carefully reviewed his opinion and finds it to have reliability, probative value and convincing quality with respect to his finding that appellant's emotional condition was not causally related to the compensable factor of employment. The Board therefore finds that appellant failed to meet her burden of proof to establish that her emotional condition is employment related.<sup>20</sup>

**CONCLUSION**

The Board finds that appellant has not established that her emotional condition was caused or aggravated by the accepted employment factor of overwork.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 16, 2007 is affirmed.

Issued: February 21, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>20</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).