

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL J. ROBERSON and DEPARTMENT OF THE NAVY,
NAVAL HOSPITAL, Oakland, Calif.

*Docket No. 95-1837; Submitted on the Record;
Issued January 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

The Board has reviewed the case record and finds that appellant has failed to meet her burden of proof in establishing that her mental depression was caused by work factors.

Under the Federal Employees' Compensation Act,¹ appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.³ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁴ However, an employee's emotional reaction to an administrative or personnel

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Vaile F. Walders*, 46 ECAB ____ (Docket No. 93-2284, issued June 21, 1995).

³ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Jose L. Gonzalez-Garced*, 46 ECAB ____ (Docket No. 93-1903, issued March 1, 1995).

matter is generally not covered,⁵ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁶

Nonetheless, the actions of an employee's supervisor which the employee characterizes as harassment may constitute a compensable factor, and if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁷ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁸

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.⁹ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.¹⁰ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹¹

In this case, appellant, then a 35-year-old secretary, filed a notice of occupational illness on February 7, 1992, claiming that her immediate supervisor had caused her so much mental and physical pain that she was unable to work. Appellant explained that the stressful situation began in February 1990 and intensified beyond tolerance when a new supervisor was appointed in October 1991.

A support specialist position became vacant, and because one of her job elements was to assist this position, appellant "was able to accommodate" that position's duties. However, she was not promoted to the position or granted a special award or quality step increase. Instead she received a small cash award "in secret without coworkers present" and this presentation upset her. When she complained about doing the extra work without compensation, her supervisor told her that no money was available and that if she did not want to do the extra work, then "stop doing it."

Subsequently, appellant asked again to be promoted but was then told that some of the duties of the vacant position were to be incorporated into appellant's position, and the vacant

⁵ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

⁶ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁷ *Margreat Lublin*, 44 ECAB 945, 956 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

⁹ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹⁰ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

position would be abolished. Further, appellant's lunch hour was reduced to 30 minutes with a break in mid-morning and mid-afternoon. She was not given any opportunity to comment on the new combined job position, the supervisor denied her request for 214 hours of advanced sick leave,¹² she was counseled regarding the correct procedures for requesting sick leave, and she was required to prepare a lengthy productivity report.

Appellant stated that she had injured her back in a car accident on February 24, 1990, that her car had been totaled in another accident on September 28, 1991, and that she had undergone surgery for a tubal pregnancy on October 28, 1991. Appellant charged that her supervisor caused her mental grief and hardship and that her mind and body had become so distressed by January 30, 1992 that continuing to work with him would be lethal to her well being.

The employing establishment controverted the claim, noting that appellant's alleged stress could be due to incidents in her life external to the workplace. On March 25, 1992 the Office of Workers' Compensation Programs requested that appellant provide factual and medical information to support her claim, including a detailed description of employment factors or incidents that contributed to her condition and a comprehensive medical opinion explaining what factors caused her diagnosed mental illness.

Appellant's response elaborated on her previous statement, noting that she had several times asked to be compensated for doing the extra work. Appellant was off work from November 18, 1991 until January 10, 1992 to participate in a pain management program. Appellant concluded that all the extra work of being responsible for the duties of two highly demanding positions and her supervisor's continuing harassment had affected her "almost lethally" and caused unbearable pain, making her unable to work.

In a report dated April 7, 1992, Dr. Kirk Stumpf, Board-certified in internal medicine, indicated that appellant was seen for an adjustment reaction on January 15, 1992, that she returned to work on January 27, 1992 for four hours a day, and that appellant had chronic back pain, with "some apparent exacerbation by difficulties at work."

In a report dated May 1, 1992, Dr. Borina Dramov, a neurologist, diagnosed lumbar radicular pain, stress reaction, and depression, all work related, and stated that appellant was totally disabled. Subsequently, Dr. Dramov indicated on November 13, 1992 that appellant was treated in a stressful and seriously discriminatory manner by her supervisor, that she was totally disabled from November 18, 1991 through March 31, 1992 due to severe stress, anxiety, and depression resulting from extra work, and that she now had a different position.

On June 26, 1992 the Office denied the claim on the grounds that appellant's emotional condition did not arise out of the performance of her duties and that she had failed to identify any compensable work factors that caused the diagnosed condition.

¹² The record indicates that appellant requested the advanced leave to attend a pain management program. Her supervisor noted that as of December 14, 1991 appellant had negative balances in both annual and sick leave.

Appellant timely requested reconsideration and submitted the report of Dr. Robert I. Picker, a psychiatrist who concluded that appellant's back pain was clearly aggravated by psychophysiological stress caused by excess work. On November 16, 1993 the Office denied appellant's request on the grounds that the medical evidence was insufficient to warrant modification of the prior decision. The Office noted that Dr. Picker's conclusion was based on the erroneous assumption that appellant had been required to do the work of two people.

On November 14, 1994 appellant filed a notice of recurrence of disability, amending her initial claim and stating that her stress "accelerated with my increased work load until I became disabled physically and mentally." Appellant added that her notice amended her initial claim and that the mental stress caused by a voluminous work load aggravated her back, resulting in chronic pain.

In a detailed statement requesting reconsideration of the prior decisions, appellant explained the specific duties she was assigned which caused prolonged walking, sitting, and typing. In support of her request, appellant submitted copies of her daily "to do today" calendar of tasks performed from February 5, 1990 to April 1992.

On January 6, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of the prior decision. The Office noted that appellant attempted to change her history of injury by citing difficulty in completing a large work load rather than harassment by her supervisor as the cause of her stress-related condition. The Office found that appellant's "new history of injury lacked credibility and is inconsistent with her original statements and behavior."

The Board finds that appellant has failed to establish that an excessive work load was the cause of her diagnosed stress and adjustment disorder. In her initial claim, appellant alleged harassment by her supervisor as the cause of her emotional condition and cited specific instances such as denying her a promotion, changing her lunch hour, refusing her advanced sick leave, and counseling her on proper procedure for obtaining leave.

Denial of a promotion is not considered to be a compensable work factor, inasmuch as a claimant's reaction to such denial is self-generated.¹³ Appellant also alleged that her new supervisor harassed her over lunch and leave issues. While administrative and personnel matters are generally related to employment, these matters are functions of the employer and not duties of the employee. Thus, the Board has held that an employee's reactions to administrative actions are not compensable unless the evidence demonstrates error or abuse on the part of the employing establishment in its administrative capacity.¹⁴

Here, appellant has submitted affidavits from two coworkers and her sister but these documents addressed the alleged work overload and did not mention the promotion, lunch, or leave issues. Thus, appellant has failed to show any error or abuse on the part of the employing

¹³ See *Peggy Ann Lightfoot*, 48 ECAB ____ (Docket No. 95-1676, issued May 2, 1997) (finding that denial of a promotion is not compensable because such denial constitutes the employee's desire to work in a different position).

¹⁴ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

establishment.¹⁵ Further, the fact that appellant experienced distress from two automobile accidents and an emergency surgery does not raise an inference that her working environment exacerbated her emotional condition.¹⁶

On reconsideration, appellant alleged that she was required to perform the work of two positions and attempted to demonstrate that an excessive work load was the cause of her emotional stress. While overwork can be a compensable work factor, none of the calendar evidence submitted by appellant shows that she was required to perform double duty.¹⁷ Appellant initially stated that she could accommodate the extra work that she chose to perform and acknowledged that when she complained about doing extra work without increased compensation, she was told not to do the work.

Appellant also acknowledged that her updated position description included some of the duties of the vacant job, but she did not allege that her new job constituted excessive work. Nor does the record reflect that she worked overtime or took work home, which would indicate an overload of work assignments.

While appellant claimed generally that her stress and anxiety resulted from a voluminous work load, she has failed to meet her burden of proving that her regular or specially assigned duties constituted excessive work sufficient to cause or aggravate her emotional condition.¹⁸ Thus, appellant has not established any compensable work factors under the Act and, therefore, the Board need not consider the medical evidence.¹⁹

The January 6, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 23, 1998

¹⁵ See *Daniel B. Arroyo*, 48 ECAB ____ (Docket No. 95-62, issued November 22, 1996) (finding that while verbal altercations and a tense relationship with a supervisor may be compensable work factors if proven, appellant failed to support his allegations with probative evidence).

¹⁶ See *Joe E. Hendricks*, 43 ECAB 850, 857 (1992) (finding that appellant's allegations regarding the causes of his stress did not represent compensable work factors).

¹⁷ See *Frank A. McDowell*, 44 ECAB 522, 524 (1993) (finding that while overwork is a compensable employment factor, appellant failed to substantiate his allegation that he was overworked).

¹⁸ See *Merriett J. Kauffman*, 45 ECAB 696, 703 (1994) (finding that appellant failed to allege or establish that specific work tasks or requirements assigned to him gave rise to his emotional condition).

¹⁹ See *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member