

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERNECE STEPHENS and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 96-929; Submitted on the Record;
Issued March 10, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On October 20, 1993 appellant, a 35-year-old mail clerk, filed a Form CA-2 occupational disease claim for employment-related emotional stress, insomnia and depression, which she attributed to being transferred by her employing establishment from the day shift to the midnight shift.

In a handwritten letter received by the Office of Workers' Compensation Programs on December 16, 1993, appellant stated that she had never suffered from stress prior to June 1993, when she was transferred from her position as a mailhandler, a light-duty position created for her after she returned to work following an employment-related back injury and back surgery. Appellant stated that she had been working on the 7:30 a.m. to 4:00 p.m. shift without problems and was subsequently placed in a job where she had to work from 10:30 p.m. until 7:00 a.m. Appellant asserted that because of this drastic change in her work schedule, which created problems for her as a single mother, and because her supervisor harassed her and verbally abused her for being a rehabilitation employee, her life became a "nightmare."

Appellant consulted a psychiatrist, Dr. Edward C. Kirby, Board-certified in psychiatry and neurology, who submitted a note to the Office dated November 3, 1993 in which he stated that appellant had a stress-related emotional condition and that the "major" stress was caused by her changing work situation.

By letter dated February 23, 1994, the Office advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits, and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her illness. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms

and the medical reasons for her condition, and an opinion as to whether exposure or incidents at her employing establishment contributed to her condition. The Office sent a similar letter to appellant's employing establishment.

Appellant responded to the Office's February 23, 1993 letter of inquiry in a letter dated March 29, 1994. She stated that she experienced constant harassment from her supervisors at her new job, that these supervisors made it known they did not like her or other employees who reported injuries or who were rehabilitated employees, and maintained that such employees were a detriment to the employing establishment. Appellant alleged that she was denied work assignments and told she was nonproductive, and asserted that she was forced to work outside of her medical restrictions. She did not submit additional medical reports, but asserted that such reports were forthcoming.

The employing establishment did not respond to the Office's February 23, 1994 letter, nor did it respond to a subsequent request from the Office dated April 5, 1994.¹

In a letter to appellant dated April 5, 1994, the Office requested additional factual and medical information pertaining to her claim. Appellant did not respond to this request.

By decision dated March 1, 1995, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. In an accompanying memorandum to the Director, the claims examiner stated that appellant had failed to provide rationalized medical evidence in support of her claim that she suffered an emotional condition caused by employment factors, and had failed to submit corroborating evidence of her allegations of harassment and verbal abuse against her supervisor, including statements from witnesses. The claims examiner noted that the mere fact a condition manifested itself during or after a period of employment was not sufficient to establish that the claimed condition resulted from factors of employment. The Office therefore denied appellant compensation for her alleged emotional condition.

In a letter dated March 22, 1995, appellant requested an oral hearing, which the Office scheduled for September 30, 1995. At the hearing, appellant testified that she had never worked on the midnight shift before, but that soon after she was transferred she began to have problems because she was asked to perform tasks beyond her physical restrictions. Appellant also stated that she began to experience insomnia, gained 70 pounds, and had anxiety attacks and crying spells. Appellant further stated that she felt working on the midnight shift was a violation of her doctor's restrictions, and reiterated her assertion that her supervisor harassed her because she was a rehabilitated employee and did not want her to work for his unit.

Appellant stated that she was eventually transferred into a different position on a 6:45 a.m. to 3:15 p.m. shift, where she is currently employed, and was experiencing no problems at this position.

¹ Appellant's supervisor on the midnight shift indicated on the Form CA-2 that she had been transferred back to her original assignment on the day shift on November 5, 1993.

In a decision dated October 10, 1995, the hearing representative rejected appellant's claim based on an employment-related emotional condition, stating that the evidence did not establish she had sustained an injury in the performance of her duties. The hearing representative rejected appellant's initial contention that her transfer from the day shift to the midnight shift resulted in an employment-related emotional condition, stating that the mere fact she was not allowed to work on a specific shift was analogous to not being permitted to work in a particular environment, and was therefore not compensable as a factor of employment.² The hearing representative further found that appellant failed to submit any evidence corroborating her allegation that she was harassed by her supervisors.

Additionally, the hearing representative stated that the only medical evidence in the record indicating appellant had an employment-related emotional condition was the December 3, 1993 note from Dr. Kirby, which merely stated that she had a stress-related emotional condition with the major stress resulting from her changing work situation. The hearing representative found Dr. Kirby's report was of no probative value inasmuch as the change in her work situation did not constitute a factor of employment.

Based on this evidence, therefore, the hearing representative found that appellant failed to meet her burden of establishing that she suffered an emotional injury in the performance of her duty. He therefore affirmed the Office's March 1, 1995 denial of compensation.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

In the instant case, appellant did cite a factor of employment which may have resulted in a compensable emotional condition; *i.e.*, her transfer to the midnight shift.⁵ The Board has held that appellant's change in duty shift from day to night work constitutes a factor of employment to be considered in determining whether an injury has been sustained in the performance of duty.⁶ However, appellant's burden of proof is not discharged by the fact that she has merely

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Id.*

⁴ *Id.*

⁵ *William P. George*, 43 ECAB 1159 (1992)

⁶ *See Gloria Swanson*, 43 ECAB 161 (1991); *see John J. Granieri*, 41 ECAB 916 (1990).

identified an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to substantiate her allegation that this transfer resulted in an employment-related emotional condition.⁷ In the present case, appellant's identification of this one employment factor, without supporting medical evidence, is not sufficient to meet her burden of establishing that she suffered from a compensable emotional condition caused by specific factors of employment.

The only medical evidence appellant submitted was the December 3, 1993 note from Dr. Kirby, which consisted of two declaratory sentences indicating that she was suffering from stress primarily caused by her "changing work situation." The note contains no diagnosis of a specific emotional condition or disability; no detailed analysis of how employment factors caused any specific condition or disability; and no indication of how appellant was affected by or treated for any such emotional condition or disability. Thus, the hearing representative properly determined that Dr. Kirby's note lacked probative value, and that therefore appellant failed to submit rationalized, probative medical evidence to support her allegation that she sustained a specific injury due to the claimed event.

The Board also rejects appellant's contention that harassment and verbal abuse from her supervisors resulted in an employment-related emotional condition. Mere perceptions and feelings of harassment or discrimination will not support an award of compensation.⁸ To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.¹⁰

In the present case, the hearing representative properly determined that appellant provided no additional factual evidence to support her allegations of harassment and verbal abuse, notwithstanding the requests by the Office in its letters of February 23 and April 5, 1994.¹¹ Appellant also failed to substantiate her contentions that she was coerced into performing activities beyond her restrictions and that her work duties were contrary to the restrictions imposed due to her back condition.¹² Accordingly, appellant has failed to meet her burden of showing that she suffered an emotional condition in the performance of duty.

⁷ See *Gloria Swanson*, *supra* note 6.

⁸ See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

¹⁰ See *Ruth C. Borden*, 43 ECAB 146 (1991).

¹¹ Compare *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹² To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative reliable evidence. *Ruthie M. Evans*, 41 ECAB 416 (1990).

The decisions of the Office of Workers' Compensation Programs dated October 10 and March 1, 1995 are affirmed.

Dated, Washington, D.C.
March 10, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member