

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIVIENNE MARSHALL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION HOSPITAL, St. Albans, N.Y.

*Docket No. 96-1266; Submitted on the Record;  
Issued March 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

On February 23, 1995 appellant, then a 52-year-old food service worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment.<sup>1</sup> Appellant stated, "Due to harassment and persecution by employees and management, I have become increasingly depressed with severe anxiety attacks since returning to work on or about August 1993." Appellant stopped work on February 6, 1995.

By decision dated June 30, 1995, the Office denied appellant's claim on the grounds that she did not establish fact of injury. Appellant requested reconsideration and submitted additional evidence. By decision dated December 18, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that appellant had not established any compensable factors of employment.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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 of workers' compensation. Where the disability results from an employee's

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<sup>1</sup> Appellant filed a previous claim for an emotional disease occurring on or prior to August 7, 1992. The Office of Workers' Compensation Programs assigned the claim Office File No. A2-666277 and, on September 26, 1994, accepted the claim for an adjustment disorder with mixed emotional features.

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 Federal Employees' Compensation Act.<sup>2</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 his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</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>4</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>5</sup>

In the present case, appellant has alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered factors under the terms of the Act.

Appellant attributes her emotional condition, in part, to the employing establishment assigning her duties outside the physical limitations imposed by her physician.<sup>6</sup> Specifically, appellant argues that the employing establishment coerced her into working full-duty employment on the tray assembly line. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor, however, in the instant case, appellant has not presented sufficient evidence to support the factual aspect of this allegation.<sup>7</sup> In support of her assertion, she submitted a statement from a physician dated June 1, 1994, which indicates that she could not work the tray assembly line.<sup>8</sup> However, Ms. Elissa Levine, a supervisor with the employing establishment, denies that appellant performed duties outside her physical limitations. The employing establishment submitted form reports from

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>5</sup> *Id.*

<sup>6</sup> Appellant maintains that the Office accepted her claim for employment-related cervical strain on March 1, 1994. Appellant returned to light-duty employment in June 1994.

<sup>7</sup> See *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>8</sup> The signature of the physician is not legible and it is not readily apparent from the form that the physician is specifically addressing appellant's limitations.

Dr. Ernest D. Abeles, appellant's attending physician. In a report dated May 18, 1994, Dr. Abeles restricted appellant to lifting less than 10 pounds with her right arm. In a duty status report dated June 1, 1994, Dr. Abeles found that appellant could perform the activities described on the supervisor's portion of the form with listed limitations. Ms. Levine related that from May 23 to June 3, 1994 appellant worked in a limited-duty position which did not require lifting over 10 pounds. The supervisor further indicated that on June 3, 1994, at a meeting between appellant, management and the union, appellant agreed to try to work on the tray line effective June 6, 1994. The record contains a copy of the agreement dated June 3, 1994, in which appellant stated that she would try working on the tray line for one meal. The agreement indicated that management had reviewed Dr. Abeles' June 1, 1994 report and noted that appellant "would not be lifting or pulling" in the performance of her duties. The supervisor further noted that appellant worked on the tray line only on June 9, 1994, the date she allegedly sustained a recurrence of disability due to her March 1, 1994 cervical strain. It thus appears that appellant's assignment to the tray line was voluntary and in accordance with the work restrictions imposed by her attending physician; therefore, she has not established that the employment did not honor her work restrictions when she was assigned to work the tray line.

Appellant further alleges that she experienced harassment and discrimination from her coworkers, especially Ms. Irene Adeope, when the employing establishment transferred her to the communications center on September 12, 1994.<sup>9</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>10</sup> Appellant contends that Ms. Adeope called her lazy and stupid and told her she had to get her own pencils. She further maintains that her coworkers ostracized her and followed her to the bathroom and that their action was probably racially motivated. The employing establishment, in response to the allegations, stated that an internal investigation and an Equal Employment Opportunity Commission (EEOC) investigation revealed no basis for appellant's allegations of discrimination. In the present case, appellant's allegations of harassment and discrimination are not supported by any substantial, reliable or probative factual evidence of record, and thus she has not established a compensable factor of employment.

Appellant further maintains that she was assigned her duties for which she had not received adequate training. Training, or a lack thereof, is an administrative matter which is not covered by the Act absent a showing by appellant of error or abuse in the actions of the employing establishment.<sup>11</sup> In the instant case, the employing establishment challenged appellant's assertion that she received assignments for which she had insufficient training. The employing establishment reported that an internal investigation did not support appellant's allegation that she was assigned duties for which she was untrained. Appellant has submitted no

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<sup>9</sup> The employing establishment transferred appellant to the communications center in accordance with the request of appellant's attending physician.

<sup>10</sup> *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

<sup>11</sup> *Mildred D. Thomas*, 42 ECAB 888 (1991).

evidence which would establish a factual basis for her allegations concerning a lack of training and thus has not established a compensable employment factor.<sup>12</sup>

For the foregoing reasons, appellant has not established any compensable factors of employment under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.<sup>13</sup>

The decisions of the Office of Workers' Compensation Programs dated December 18 and June 30, 1995 are hereby affirmed.

Dated, Washington, D.C.  
March 20, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>12</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>13</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).