

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MELINDA JANIGA and FEDERAL DEPOSIT INSURANCE  
CORPORATION, FORECLOSURE DEPARTMENT, Irvine, Calif.

*Docket No. 97-2635; Submitted on the Record;  
Issued July 14, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

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

The Board has carefully reviewed the record evidence and finds that appellant has failed to meet her burden of proof in establishing that her anxiety disorder was caused by work factors.

Under the Federal Employees' Compensation Act,<sup>1</sup> appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she 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 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.<sup>2</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> 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.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

matter is generally not covered<sup>5</sup> 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.<sup>6</sup>

Nonetheless, 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.<sup>7</sup> However, an employee must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

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

In this case, appellant, then a 50-year-old foreclosure technician, filed a notice of occupational disease on March 10, 1994, claiming that her anxiety disorder and hypertension were work related. Appellant explained that her problems began in May 1993 when coworkers refused to speak to her after she questioned their work and worsened over the next few months. Appellant stopped work on October 4, 1993.<sup>12</sup>

On April 26, 1995 the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant's psychiatric condition had arisen in the performance of duty. The Office found that appellant's emotional reactions to incidents regarding performance notes and reviews, the granting of leave, the scheduling of breaks and lunch hours and the assignment of work and training were not covered under the Act as these were administrative matters.

Appellant requested reconsideration on the grounds that a coworker who could have corroborated appellant's allegations had not been contacted by the Office, that appellant's

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<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB 754, 756 (1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>7</sup> *Margreat Lublin*, 44 ECAB 945, 956 (1993).

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

<sup>9</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>12</sup> Appellant was terminated by the employing establishment, effective April 20, 1994, because of unavailability for work. She was hired on October 19, 1992 for a one-year appointment.

difficulties with two coworkers had not been resolved, that the coworkers' actions prevented appellant from completing her assigned tasks and necessitated her working through her breaks and lunch hours, that appellant received no training for her assignment as back-up to a coworker, that personal items were taken from her desk and faxed information she needed was destroyed, that notes regarding her work were left on her desk for others to read, that appellant was singled out by her supervisor regarding the rules on breaks and lunches and that appellant's supervisor took "punitive action" against her, including the assignment of extra work that she was unable to perform, rather than ameliorating the situation with her coworkers.

On May 31, 1996 the Office denied modification of its prior decision. Appellant again requested reconsideration and submitted a lengthy statement from Katherine Kruse, a coworker. On March 31, 1997 the Office denied modification of its prior decision, noting that Ms. Kruse had provided her perceptions of what had occurred between appellant and her supervisor and coworkers and finding that her statement did not establish error or abuse on the part of management in carrying out its administrative duties.

The Board finds that appellant has failed to establish any compensable work factors as the cause of her emotional condition. Ms. Kruse alleged that a "campaign of isolation, sabotage and terror" was conducted against appellant in the summer of 1993 to force her out of the unit, noting that two other employees had previously been forced to leave. She agreed with appellant that two coworkers and her supervisor had stopped speaking to her except for official business, but the absence of cordiality at work, even if proven, is not compensable under the Act.<sup>13</sup>

Appellant also alleged that she was singled out for "punitive" treatment by being forced to take her breaks and lunch hour at certain times and places, but the record contains no evidence supporting this allegation. Her supervisor explained that the union's six-hour rule had not been strictly enforced but that when one of the unit's employees changed her start time to 7:00 a.m., she could no longer take lunch at 2:00 p.m. and the change was made.

Appellant stated that notes critiquing her performance were left on her desk for others to read, but the record reveals that the e-mail memoranda from the unit's supervisor regarding work problems were sent to all unit employees. She produced no evidence of the notes or of witnesses who read them.

Appellant also complained that her supervisor worked at her desk during appellant's absence and removed her files, that candy, pens, and personal items disappeared from her desk and that information she needed was altered or destroyed. None of these allegations is factually established, and Ms. Kruse's reiteration of appellant's allegations does not establish their validity.

While Ms. Kruse perceived the unit as hostile to appellant and related that two other employees had been "forced" to leave, she provided no evidence of error or abuse on the part of

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<sup>13</sup> 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).

management in assigning work or handling personnel matters. Appellant and Ms. Kruse contended that nothing was resolved in the unit's September 23, 1993 meeting, but appellant's own statement indicated that management agreed that the unit "all did a great job and we should all start getting along."

Ms. Kruse generally supported appellant's allegation that she was overworked and was unable to complete her own assigned work, but the record contains no evidence of such overwork or incomplete assignments.<sup>14</sup> To the contrary, while appellant was listed as back-up for her unit's clerk-typist in an e-mail dated August 31, 1993, she performed this work only once every other week or when the clerk-typist was on leave. Further, appellant's performance appraisal indicated that she completed all assigned tasks in a manner well above acceptable.

Appellant also alleged a lack of computer training for the back-up typing position, but she stated on her application that she was proficient in Wordperfect 5.3 and several memoranda from her supervisor indicated that training in the unit's Wordperfect 5.1 system was provided.

Other than overwork, appellant has not alleged that a reaction to specific regular or specially assigned duties, such as typing, researching, or handling notices of default, caused or aggravated her emotional condition.<sup>15</sup> Her perceptions that the work atmosphere was hostile and that her supervisor was out to get her are not compensable work factors.<sup>16</sup> Inasmuch as appellant has failed to meet her burden of proof in providing factual evidence supporting the employment factors or incidents alleged to have caused or contributed to her condition, the Board finds that the Office properly denied her claim.<sup>17</sup>

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<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</sup> See *Alberta Kinloch-Wright*, 48 ECAB \_\_\_\_ (Docket No. 95-1254, issued April 23, 1997) (finding that appellant's own perceptions of harassment and hostility from her supervisor were neither specific nor independently corroborated and were therefore not compensable under the Act).

<sup>17</sup> See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).

The May 31, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
July 14, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member