

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWEN RANDEL and DEPARTMENT OF THE NAVY,  
OAKLAND NAVAL HOSPITAL, Oakland, Calif.

*Docket No. 97-928; Submitted on the Record;  
Issued May 4, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment; and (2) whether appellant has established that she continues to suffer from physical residuals of her accepted stress-induced headaches or gastrointestinal conditions.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment. The Board further finds that appellant no longer suffers from any residuals causally related to her accepted headaches or gastrointestinal condition.

Appellant filed a notice of occupational disease on May 4, 1995 alleging that she developed dyspepsia, migraine headaches and overall work stress due to factors of her federal employment. Appellant stopped working on April 6, 1995. By decision dated and finalized October 22, 1996, the Office of Workers' Compensation Programs found that the weight of the medical evidence of record failed to establish that appellant developed an emotional condition causally related to factors of her federal employment. The Office accepted, however, that appellant had sustained headaches and gastrointestinal problems as a result of compensable factors of her federal employment and that compensation was payable for the periods following each date that an accepted factor occurred. The Office further determined, however, that the weight of the medical evidence established that appellant no longer suffered from any residuals of her headaches or gastrointestinal condition, and therefore denied any further compensation for wage loss or medical benefits.

To establish an occupational disease claim that she has sustained a stress-related emotional or physical condition in the performance of duty appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (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 the diagnosed condition.<sup>1</sup> Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>2</sup>

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Appellant attributed her condition to numerous administrative and personnel actions undertaken by the employing establishment. These included assignment of work duties,<sup>4</sup> job transfers,<sup>5</sup> leave usage and performance appraisals.<sup>6</sup>

The Board has held that such actions of the employing establishment in general are not considered compensable factors of employment because they relate to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>7</sup> In this case, appellant has submitted no evidence establishing that the employing establishment acted unreasonably in the above-mentioned administrative or personnel matters.

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<sup>1</sup> *Ruby I. Fish*, 46 ECAB 276 (1994); *Mary A. Sisneros*, 46 ECAB 155 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

<sup>4</sup> *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

<sup>5</sup> *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

<sup>6</sup> *Sammy N. Cash*, 46 ECAB 419 (1995).

<sup>7</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

Appellant also attributed her emotional condition to additional administrative actions including a proposed removal, which was later rescinded in favor of a transfer to another department, and an incident in September 1993, in which appellant's leave status, which included notations indicating when she had been on leave without pay or absent without leave, was posted in a public place by her supervisor. The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment,<sup>8</sup> and appellant has submitted no evidence corroborating her allegation that her supervisor had conspired with others to fire her. With respect to the posting of appellant's leave, appellant's supervisor at the time explained that the master schedule was posted because it is used to mark time cards, and that the schedule did reflect the type of leave used, when applicable. She added that after appellant complained to her about this practice, she apologized to appellant and changed the practice so that the posted schedule no longer reflected this information. Again, the fact that this practice was later changed does not establish error or abuse, and appellant has submitted no evidence that the employing establishment had acted unreasonably in this matter.

Appellant further attributed her diagnosed conditions to the failure of the union to fully assist her with her grievances by failing to return her phone calls and failing to "look into" the employing establishment's cash award policy. Actions taken by the employing establishment regarding the submission of grievances are administrative matters and not duties of the employee. Where the evidence demonstrates that the employing establishment has neither erred or acted abusively in administration of personnel matters, coverage will not be afforded.<sup>9</sup> Moreover, grievances, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>10</sup> Finally, the Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.<sup>11</sup> Therefore, appellant has not established a compensable factor of employment with respect to these particular issues.

Finally, appellant attributed her emotional condition to numerous instances of harassment and discrimination by her supervisors and coworkers. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her or her allegations with probative and reliable evidence.<sup>12</sup>

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<sup>8</sup> *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

<sup>9</sup> *See Sharon R. Bowman*, 45 ECAB 187, 194 (1993).

<sup>10</sup> *Parley A. Clement*, 48 ECAB \_\_\_\_ (Docket No. 95-566, issued January 17, 1997).

<sup>11</sup> *See Larry D. Passalacqua*, 32 ECAB 1859 (1981).

<sup>12</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

Appellant alleged that supervisors constantly abused and harassed her by calling her a religious fanatic, waiting in the doorway to assure appellant arrived at work on time, questioning the length of time she used for bathroom breaks, blaming her for attracting “military men” into the file room, calling appellant a “snitch” and a “troublemaker,” yelling at her, shaking a finger in her face when speaking to her, making a racist comment about Martin Luther King, Jr., Day, giving appellant dirty looks, calling appellant’s illnesses “petty,” and acting “jealous hearted” and hostile towards appellant. Appellant has submitted no evidence substantiating that these events constituted harassment. While appellant did submit several witness statements in support of her allegations, these statements are primarily general in nature and do not specifically refer to the above-mentioned incidents identified by appellant and, therefore, do not substantiate appellant’s allegations that she was harassed by her supervisors in the manner listed above.<sup>13</sup>

The witness statements submitted by appellant did, however, substantiate six separate compensable factors of employment, five of which were accepted as such by the Office. Appellant alleged that her supervisor, Sherry Thomas, under whom appellant worked from December 18, 1989 to October 1, 1990, called appellant “slow and stupid” on more than one occasion. During this same time period, Ms. Thomas also yelled at appellant in front of patients and staff for doing her job too slowly. In addition, Charlene Collier, a coworker of appellant’s under Ms. Thomas, asked men who came into the file room what size shoes they wore, which supposedly was to indicate the size of their penis. This occurred while appellant was in the room. These episodes were found to be compensable factors by the Office, and the Board concurs with this finding, as the described incidents are specifically corroborated by the witness statement of Leroy West, and are therefore considered to be documented episodes of harassment towards appellant by appellant’s supervisor and coworkers. In addition, the statement of Mr. West also specifically corroborates appellant’s allegation that after October 7, 1990 when appellant was transferred out of the file room and upstairs to another department, Ms. Collier and another coworker identified only as LaShonda put threatening notes on appellant’s locker and told appellant that they were waiting for her to be transferred back downstairs. While the Office found that these threatening episodes were not proven to have occurred, as they are corroborated by Mr. West, the Board accepts this additional described harassment as factual.<sup>14</sup> The Office also accepted as compensable factors that while working in the OB/GYN unit between October 7, 1990 and October 31, 1992, appellant spent six months working at the Obstetrics Department front desk alone without assistance, and that during this same time period but when she was not assigned to the front desk, appellant was required to train and supervise a new employee, “Martha,” while also performing her other assigned tasks in a timely manner, which was very difficult to accomplish. This is specifically corroborated by a statement submitted by

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<sup>13</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>14</sup> The Board notes, however, that these described threatening incidents took place between October 7, 1990 and October 31, 1992, a period during which other accepted compensable factors also occurred. Therefore, the acceptance of this additional factor does not add any periods of coverage beyond those identified by the Office.

Yolanda Roberts. The Board has held that physical or emotional conditions related to documented incidents of harassment<sup>15</sup> and overwork<sup>16</sup> are compensable. Therefore, the Board finds that appellant has established six compensable factors of employment, four relating to harassment by her supervisor and coworkers, and two relating to overwork, and will evaluate the medical evidence to determine if appellant has met her burden of proof.

In support of her claim, appellant submitted treatment notes and progress reports from her treating physician, Dr. Mark D. Robinson, a Board-certified internist. In his narrative report dated May 31, 1995, Dr. Robinson stated that appellant suffered from “work[-]related stress” as well as tension headaches and various gastrointestinal symptoms which were causally related to her employment. In an attending physician’s report dated September 19, 1995, Dr. Robinson diagnosed irritable bowel syndrome and migraine headaches, and stated that these conditions were both induced and aggravated by work-related stress. Dr. Robinson indicated that he first examined appellant on July 23, 1990 and stated that she was partially disabled for work until November 1, 1995. He further stated that while he was aware that, between July 23, 1990 and the date of his current report, appellant missed work due to her diagnosed conditions, he did not feel that he could ethically retroactively prescribe total disability. He explained that appellant had not previously sought medical documentation of her periods of disability, as she did not think it was necessary.

On March 20, 1996 the Office prepared a statement of accepted facts, which included a list of accepted and nonaccepted factors of employment and a list of questions to be answered, and referred appellant for second opinion examinations to Dr. Morey A. Weingarten, a Board-eligible psychiatrist, and Dr. Burton Brody, an internist.

In a report dated April 1, 1996, Dr. Weingarten diagnosed stress-related physiological response affecting headaches and irritable bowel syndrome, occupational problem, obsessive-compulsive traits and migraine headache. He stated that appellant’s response to stressful situations was to develop psychophysiologic symptoms, headaches and gastrointestinal distress, and that therefore, her symptoms should formally be diagnosed as a stress-related disorder. He further stated that appellant had no evidence of any other independent psychological disorder. Dr. Weingarten added that appellant’s psychophysiologic disorders are a result of her preexisting vulnerability, due to the rigidity in her character structure and sensitivity to criticism, and her difficulties with work-related events that were not accepted as factors of her employment. Dr. Weingarten concluded:

“My impression is that [appellant] rigidity has rendered her sensitive to work-related stressors that she perceived as mistreatment in the workplace. Her repetitive pattern suggests that this is a function of her characterological style, rather than factors in the workplace. I would note that the accepted work factors do document that there were some difficulties in the workplace. They could reasonably be assumed to have caused some transient distress and apparently,

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<sup>15</sup> *Helen P. Allen*, 47 ECAB 141 (1995).

<sup>16</sup> *Robert W. Wisenberger*, 47 ECAB 406 (1996).

they did, as noted in Dr. Brody's review. However, these limited accepted factors would not have been expected to result in any persistent difficulties or impairment. Therefore, it is my opinion that [appellant's] ongoing symptoms, and particularly her departure from the workplace, were unrelated to the accepted work factors and a function of her sense of being wronged as documented in her history."

In a report dated April 4, 1996, following his review of the available records and his examination of appellant, Dr. Brody concluded that, other than moderate exogenous obesity, the results of his examination were normal. He noted that there was no established diagnosis of record, appellant having been variously diagnosed as having had situational tension headaches and episodes of gastritis, or enteritis, none as a chronic condition. Dr. Brody added that while headaches and gastroenteritis can be aggravated by tension situations due to factors of employment, aggravation of these conditions is temporary and often only a day or two of duration, ceasing when the tension provoking situations cease. He concluded that appellant had no employment-related residuals and no apparent physical limitations from any work-related disability. In a supplemental report dated June 13, 1996, Dr. Brody clarified his prior opinion, stating:

"(1) Her reported symptoms of headaches and gastrointestinal disturbances probably reflect psychosomatic manifestations of response to the stress of her employment situation which are not due to the work demands but rather to her perception of inappropriate behavior of supervisors and coworkers. Therefore I would judge that her physical symptoms are a temporary aggravation based on the [a]ccepted [w]ork [f]actors. In each documented instance the sick leave taken (day or two) allowed time for resolution of the symptoms.

"(2) She is not now disabled from her regular work duties and the sick leave taken during her employment allowed time for resolution of the symptoms in the past. The sick leave was the appropriate response to the temporary gastrointestinal disturbances and headaches that were reported at various times during her work history.

"(3) By examination and self-report there was fairly prompt resolution of the major symptoms on removal from the disturbing milieu. It is felt that the claimant's symptoms resolved within a few days (day or two by self-report) subsequent to leaving work, there are no residuals of any work-related physical condition, and she was able to return to same or similar employment situation at that time."

The Board finds that the weight of the medical evidence, as represented by the well-rationalized reports of Drs. Brody and Weingarten, establishes that appellant had short periods of temporary disability following each of the accepted compensable factors of employment. While Dr. Robinson indicates a longer period of partial disability, his report refers only in general terms

to appellant's work-related stress, rather than to any of the specific incidents described by appellant and accepted by the Office, and therefore, his report is of diminished probative value.<sup>17</sup>

As appellant has failed to submit sufficient medical evidence to establish either that she developed an emotional condition causally related to the accepted employment factors, or that she has an ongoing physical condition causally related to her accepted employment factors, she has failed to meet her burden of proof to establish entitlement to additional compensation benefits.

The decision of the Office of Workers' Compensation Programs dated October 22, 1996 is hereby affirmed.

Dated, Washington, D.C.  
May 4, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>17</sup> *Elizabeth W. Esnil, supra* note 4.