

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER SUSAN CLARK and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Atlanta, GA

*Docket No. 98-1546; Submitted on the Record;
Issued April 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On October 18, 1995 appellant, then a 38-year-old estate and gift tax attorney, filed an occupational disease claim, alleging that employment factors caused a stress-related panic disorder and post-traumatic stress disorder. She had stopped work on September 18, 1995. By letter dated December 13, 1995, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim and by decision dated February 26, 1996, the Office denied the claim on the grounds that appellant had not established fact of injury as no medical evidence had been submitted. On February 25, 1997 she requested reconsideration and submitted medical evidence. In a January 23, 1998 decision, the Office denied the claim, finding that appellant's condition had not occurred in the performance of duty. The instant appeal follows.

In support of her claim, appellant submitted a February 25, 1995 statement in which she generally alleged that problems with Lynn D. Abernethy, both while he was her supervisor and after he had been removed and placed in a staff attorney position and reprisal for being the class agent in an Equal Employment Opportunity (EEO) complaint against Mr. Abernethy caused her condition. She specifically stated that she was fearful of Mr. Abernethy because of his mental instability and volatile temper. Appellant also voiced complaints about Glenn Dobbs, who replaced Mr. Abernethy as her supervisor. She also submitted an affidavit dated April 14, 1993 in which she documented incidents on January 27 and February 11, 1993 when she had been yelled at and cursed by Mr. Abernethy and contended that he treated her in a disparate manner regarding a work load review. In a February 25, 1997 statement, she further reported that, after an EEO agreement which indicated that Mr. Abernethy would be reassigned, he was returned to the group as a staff attorney.

A May 17, 1993 report from an EEO investigator included interviews with appellant and coworkers and former coworkers who provided general and specific examples of harassment and disparate treatment by Mr. Abernethy.¹ The report also contained an interview with Ron Smith, Branch Chief, who generally supported Mr. Abernethy and his management actions and decisions. An EEO settlement agreement dated June 6, 1993 which did not constitute an admission of wrongdoing provided, *inter alia*, that Mr. Abernethy would be reassigned. The employing establishment was to contact and provide an opportunity for attorneys who left the employing establishment as a result of the alleged hostile environment to return when positions became available. They agreed not to further pursue the matter. Appellant also submitted a June 11, 1993 EEO settlement agreement that did not contain any admission of wrongdoing² and a June 27, 1995 EEO settlement agreement in which eight hours of leave without pay were to be changed to eight hours of duty status.

Additionally, appellant submitted copies of a July 8, 1995 memorandum signed by Mr. Abernethy as “acting group manager” and a July 20, 1995 memorandum she sent to her supervisor in which she alleged that Mr. Abernethy’s “acting” position was in breach of the settlement agreement. Lastly, she submitted a May 1, 1996 order in which the Merit Systems Protection Board dismissed her appeal as untimely filed.

The medical evidence relevant to appellant’s emotional condition includes reports from her treating psychiatrist, Dr. Randolph W. Kline. In an October 18, 1994 report, he noted that she had been under his care since February 4, 1992 and advised that she had responded to treatment and had been asymptomatic until the spring of 1994 when she developed panic disorder and depression. Dr. Kline stated that the recurrence of her major depression “occurred within the context of significant stress within the workplace” and advised that she needed a change of work location so that she would not be in daily contact with Mr. Abernethy. In a May 5, 1995 report, Dr. Kline noted that Mr. Abernethy had been successful in an appeal which caused anxiety and panic in appellant and advised that, without a reasonable accommodation, appellant would worsen to an acute level.

Sheryl G. Bear, Ph.D., a licensed psychologist, submitted a number of treatment notes including a November 29, 1995 report in which she advised that appellant had been under her care since May 22, 1995 for treatment of post-traumatic stress disorder evidenced by panic attacks which were caused by the reinstatement of “an abusive boss.” She concluded:

“[Appellant’s] work environment continued to be an enormously stressful situation for her, frequently resulting in her avoidance of the situation. Had she

¹ Interviews were conducted with Gale Whatley-Gould, Amy Campbell, Suzan Richardson, JoAnn Berry, Shirley McCrary-Simmons, Stephen Coy and Marc Sigalow. They reported treatment by Mr. Abernethy included disparate treatment of women and minorities including verbal abuse and one instance of his preventing an attorney from leaving her office, making derogatory statements, giving contradictory instructions, having vacillating expectations and generally creating a hostile work environment.

² The employing establishment was to approve in a consistent manner travel vouchers and was to provide written clarification regarding out of town travel policy. Appellant was to provide management with preplanned travel schedules.

been given a working environment in which she felt 'safe' from having any contact with the feared supervisor, no doubt she would have been able to function more adequately."

In a December 18, 1995 report, Dr. Kline noted a history that "significant anxiety in the workplace" evolved due to appellant's participation in a class action suit. He noted that, while the employing establishment made some accommodation, it was insufficient and, even with treatment, appellant's condition evolved into a reexacerbation of major depression and panic attacks and post-traumatic stress disorder which rendered her unable to perform any gainful employment. In a March 25, 1997 report, Dr. Kline reported that appellant's condition was "secondary to psychological traumas that occurred within her workplace."

The employing establishment submitted copies of appellant's personnel records including notifications of personnel action dating from March 11, 1991 through November 13, 1995, and disciplinary actions³ issued to appellant with supporting documentation including a December 5, 1995 decision to remove because her performance did not meet the standards required by the employing establishment. In a July 23, 1997 memorandum, Mr. Dobbs, estate and gift tax manager, advised that the EEO agreement did not require that Mr. Abernethy be placed in a separate physical location. Mr. Dobbs advised that he had never witnessed Mr. Abernethy threaten or harass appellant and denied her request that her physical work location be moved 15 miles away from Mr. Abernethy due to her poor work performance. He noted that appellant was assigned a work space on another floor.⁴

The Board finds that this case is not in posture for decision.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (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 her emotional condition.⁵ Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage 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 comes within coverage of the Federal Employees' Compensation Act.⁶ On the other hand, there are situations when an injury has some connection with the

³ These included a letter of suspension dated May 2, 1995 that was later withdrawn and notices of suspension dated June 14 and October 6, 1995, and an October 6, 1995 notice of proposed removal on the grounds that her performance was unacceptable.

⁴ Mr. Dobbs indicated that there was some delay in locating and creating a space for appellant.

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ 5 U.S.C. §§ 8101-8193.

employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁷

Regarding appellant's allegations, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.⁸ Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.⁹ In this case, however, as evidenced by the June 6, 1993 EEO settlement agreement and numerous witness statements by coworkers and former coworkers which were included in the EEO investigative report dated May 17, 1993, the Board finds that appellant met her burden of proof to establish that Mr. Abernethy acted in an abusive manner as supervisor. However, it still must be demonstrated by rationalized medical evidence that these factors caused or contributed to appellant's emotional condition.

In the instant case, both Drs. Kline and Bear advised that appellant's emotional condition was caused by contact with Mr. Abernethy. Although the medical evidence submitted is not sufficient to meet appellant's burden of proof, it gives some support to her claim. These opinions thus raise an uncontroverted inference of causal relationship between appellant's condition and the compensable employment factors and are sufficient to require further development of the case by the Office.¹⁰

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's emotional condition is causally related to the accepted employment factors and, if so, any disability therefrom.¹¹

⁷ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

⁹ *Gregory N. Waite*, 46 ECAB 662 (1995).

¹⁰ *See John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995) (A claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted).

The decision of the Office of Workers' Compensation Programs dated January 23, 1998 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
April 14, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member