

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CASSANDRA B. ALEXANDER-TURNER and DEPARTMENT OF THE
TREASURY, INTERNAL REVENUE SERVICE, Fort Lauderdale, FL

*Docket No. 97-1483; Submitted on the Record;
Issued February 8, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On June 4, 1993 appellant, then a 42-year-old revenue officer, filed a notice of occupational disease alleging that she suffered major depression, anxiety disorder, post-traumatic stress syndrome and hypertension as a result of her federal employment. Appellant's supervisor indicated that her emotional condition manifested itself only after she was directed to comply with an Internal Revenue Service (IRS) audit, unrelated to her job, by a letter of reprimand.

In a statement accompanying her claim, appellant indicated that her emotional condition stemmed from an IRS criminal investigation of her tax return, including a reading of her constitutional rights; an IRS civil conduct investigation, including a reading of her rights; an IRS audit of her tax return; an April 13, 1993 "counseling memorandum" from her supervisor directing her to cooperate with the audit; and a May 20, 1993 formal reprimand from the employing establishment regarding her failure to cooperate with the IRS audit. Appellant also indicated that she feared losing her job as a result of these investigations.

On June 9, 1992 appellant signed a document waiving her right to remain silent and her right to advice of counsel.

On October 22, 1992 the IRS requested documents from appellant for its examination of her 1991 personal tax return.

On April 15, 1993 appellant's supervisor gave her a counseling memorandum directing that she submit certain documents to the IRS examination division relevant to her personal income tax returns. Appellant's supervisor advised her that the failure to follow these directions could result in disciplinary action.

On May 5, 1993 Dr. Stanley B. Seidman, appellant's treating clinical psychologist, stated that appellant presented with symptoms of physical and emotional distress, including trembling

and tearfulness; a severe clinical depression; and severe stress disorder. Dr. Seidman completed a Minnesota Multiphasic Personality Inventory, reviewed a 16-personality factor test, and a Beck Depression Inventory. He opined that appellant was severely harmed by her work environment through apparent actions of management which were inferred by appellant as arbitrary, improper, discriminatory, threatening and hostile. He stated that the managerial style caused a severe reactive depression, anxiety and traumatic stress disorder which were totally disabling.

On May 20, 1993 the district Director of the IRS collection division issued a letter of an official reprimand when appellant, through her attorney, refused to supply specific information relevant to her personal income tax returns. The IRS informed appellant that the letter would remain in her official personnel folder for two years.

On June 25, 1993 the employing establishment stated that appellant created her own stress-related condition. It stated that its employees were required by its internal code of conduct and ethics to timely and accurately file tax forms. It stated that it initially interviewed appellant in response to an IRS hotline complaint concerning appellant's tax return. It stated that appellant was less than cooperative with the IRS investigation and that disciplinary action ensued.

By decision dated July 7, 1993, the Office of Workers' Compensation Programs denied appellant's claim because the evidence failed to establish that the claimed injury occurred in the performance of duty. In an accompanying memorandum, the Office stated that appellant's response to the investigation and audit of her personal income tax return failed to constitute a compensable factor of employment. The Office further noted that the evidence did not support Dr. Seidman's statement that appellant suffered an emotional condition as a result of discriminatory, threatening, hostile, arbitrary, or hostile actions from the employing establishment. The Office also indicated that appellant's fear of losing her job due to the investigation of her tax return failed to constitute a compensable factor of employment.

On August 2, 1993 appellant requested a hearing. In support of her hearing request, appellant submitted a chronology of the IRS audit prepared by her attorney which indicated that she cooperated with the audit.

On October 25, 1993 appellant changed her request for an oral hearing to a request for a written review of the record. In support, appellant submitted a statement indicating that she worried about her performance appraisals. Appellant further indicated that her job was stressful because it involved taking property and because field work involved dangers such as robbery, dog attacks, and even flea attacks. Appellant further indicated that the criminal investigation, civil conduct investigation, and audit of her tax return caused further stress. She indicated that her job performance began to decline and that this was reflected on her evaluations.

Appellant also submitted a portion of deposition testimony given by her supervisor which stated that she was failing one aspect of her standards.

Appellant submitted an August 25, 1993 report from Dr. Seidman diagnosing reactive major depression, traumatic stress disorder, and hypertension, all job induced. He found a direct relationship between apparent management negative practices and appellant's problems. He stated that appellant was completely disabled.

Appellant also submitted an October 5, 1993 report from Dr. Seidman indicating that her emotional condition stemmed from the demands of her work, a negative performance appraisal, and the investigation of her tax return. He stated that on June 1993 appellant was "Mirandized" and told she was the subject of a criminal investigation. Dr. Seidman indicated that these events destroyed appellant's professional capacity. He opined that appellant's work environment became a conditioned aversive stimulus eliciting a severe traumatic stress disorder, major depression and hypertension.

In addition, appellant submitted an August 19, 1993 letter from the employing establishment proposing a disciplinary suspension on the basis that appellant failed to cooperate with the IRS in the audit of her tax return.

Finally, appellant submitted an affidavit from Lue Sanders, a tax auditor, stating that the only reasonable explanation for the IRS auditing appellant's 1991 tax return would be retaliation. She based this on the fact that her office had not yet begun auditing 1991 returns.

On November 18, 1993 the employing establishment indicated that appellant had never reported any specific incident related to her job duties which caused her to experience stress. It stated that appellant's performance evaluations were continually fully satisfactory or better. It again asserted that appellant's emotional condition stemmed from her decision not to fully cooperate with the audit of her tax return.

By letter dated December 7, 1993, appellant indicated that stressors from the day-to-day requirements of her job caused her emotional condition. She stated that her audit caused no more stress than her daily duties. Appellant indicated that these stressors were time constraints, priorities and tasks, which caused tax payers to be hostile. Appellant excerpted portions of her job description indicating that her cases were complex, that taxpayers could be hostile or uncooperative, that contacts were stressful or even dangerous, and that such exposure could cause emotional reactions. In this regard, appellant stated that she had been overwhelmed by red ants, covered and bitten by fleas, and attacked by dogs in the course of her employment.

By decision dated January 3, 1994, the Office hearing representative affirmed the Office's July 7, 1993 decision denying benefits. The hearing representative indicated that appellant's reaction to the audit of her tax return was an administrative or personnel function which was not compensable absent evidence of error or abuse. Because he found no evidence of error or abuse in the conduct of the audit, the hearing representative found that this failed to constitute a compensable factor of employment. Moreover, the hearing representative determined that appellant's argument that her daily work activities caused her condition was unpersuasive because it was not explained why she changed her claim from stating that the audit caused her condition to stating that her daily activities caused her condition.

On July 30, 1994 Dr. Seidman again indicated that appellant's job duties produced acute stress.

On November 21, 1994 appellant requested reconsideration. She again stated that her stress stemmed from her daily duties. She indicated that she cooperated with the IRS' audit and that it showed no deficiency or overassessment. Appellant provided letters from the IRS indicating that no deficiencies or overassessments were found for 1990, 1991 and 1992.

By decision dated February 1, 1995, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that appellant failed to establish that she suffered stress in her day-to-day work. It found that appellant's emotional condition resulted from audits of her income tax returns which were not in the performance of duty.

On October 6, 1995 appellant again requested reconsideration. In a lengthy statement, appellant first noted that the medical opinion evidence of record does not relate her emotional condition to the audit. Nevertheless, appellant vigorously asserted that the audit was conducted abusively. In this regard, appellant stated that the IRS violated her privacy by disclosing information to her supervisor. She stated that the IRS erred in denying her appeals. Appellant indicated that the audit was discriminatory because it occurred too quickly given the date of the tax return in question. She further stated that the IRS denied her request for counsel and refused her request for documents. She stated that the IRS erred in characterizing her as uncooperative. Appellant also indicated that her supervisor erred in compelling her to submit tax information for the audit by reprimanding and suspending her. Appellant indicated that as a result of all these actions her performance declined.

Appellant submitted a February 8, 1995 report from Dr. Seidman to support her claim. Dr. Seidman reviewed his previous testing and stated that appellant's emotional condition stemmed from the arbitrary and deliberately harmful, probably retaliatory and discriminatory actions of her employer. He further stated that appellant's psychological difficulties were due to her employer's responses which were perceived as threatening, intimidating, severely frustrating and economically impoverishing. Dr. Seidman further attributed appellant's condition to her field work in areas which threatened her security and to her duties involving seizing the assets of business and individuals. He also noted that appellant's condition stemmed from the wrongfully conducted audit.

On December 20, 1995 the IRS indicated that its audit of appellant's tax returns was conducted appropriately. It further stated that appellant had filed a law suit against it alleging racial discrimination, but that the law suit had not yet been resolved.

By decision dated March 21, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that the supervisor's compelling of appellant to submit audit information by disciplinary action was not within the performance of duty because appellant had numerous opportunities to submit the information prior to the disciplinary action. The Office further found that appellant submitted no evidence establishing that the employing establishment erred or acted abusively in conducting the audit. The Office also indicated that there had been no court ruling supporting appellant's allegations of error or abuse.

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

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 emotional reaction to 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.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

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.³ 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.⁴

Appellant alleged several factors of employment that she claimed caused her emotional condition. In this regard, appellant submitted a statement indicating that her emotional condition stemmed from a fear of job loss due to poor evaluations and from the stress of working in a dangerous environment in which she had to confiscate property. Appellant's allegations were supported by Dr. Seidman, her treating clinical psychologist, in his October 5, 1993 and July 30, 1994 reports. The employing establishment noted that appellant had never reported any specific instances of her regular duties causing stress. Appellant restated that her day-to-day job duties caused her emotional condition in her December 7, 1993 and November 21, 1994 letters. Appellant's assertion, however, that her day-to-day duties caused her emotional condition lacks any convincing quality. Both appellant and Dr. Seidman initially attributed appellant's emotional condition solely to her reaction to the IRS investigation and audit. Moreover, appellant's supervisor stated that on appellant's claim form that appellant manifested her alleged emotional condition only after she was directed to comply with the IRS audit. Following the Office's decision that appellant's reaction to the audit failed to constitute a compensable factor of employment, both appellant and Dr. Seidman suddenly attribute appellant's condition to her day-to-day duties rather than her reaction to the audit. Neither appellant nor Dr. Seidman provide any explanation for their change of opinions concerning the cause of appellant's emotional condition. Their opinions, therefore, lack credibility and fail to establish that appellant's regular duties were a compensable factor of employment.⁵

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Id.*

⁵ In addition, neither appellant's reaction to her performance appraisal nor her fear of losing her job, constitute compensable factors of employment; see *Effie O. Morris*, 44 ECAB 470 (1993); *Lorraine E. Schroeder*, 44 ECAB

As noted above, however, appellant also contends that she suffered an emotional condition as a result of an abusive audit conducted by the IRS. In this regard, appellant stated that the IRS' criminal investigation of her tax return, its civil conduct investigation of her tax return, and its subsequent audits caused her emotional condition. Appellant submitted an affidavit from Lue Sanders, a tax auditor, suggesting that the IRS audit of return was retaliatory because it occurred so quickly after the filing. Appellant also cited numerous instances when the IRS conducted the audits abusively. This abuse allegedly included the illegal divulging of private information to appellant's supervisor, the illegal denial of appellant's request for appeals of her audit, the illegal refusal to provide appellant with audit documents, and a mischaracterization of appellant's participation in the audit as uncooperative. The IRS responded that its investigation stemmed from an IRS hotline complaint, rather than any form of retaliation, and it denied that its investigation was conducted inappropriately.

The record reveals, however, that once the IRS initiated an audit of appellant's personal tax returns, the employing establishment required her to cooperate with the audit through progressive coercion and disciplinary action such as issuing a counseling memorandum urging her to submit tax documents, issuing a letter of official reprimand for failure to submit such documentation, and issuing a proposed disciplinary suspension for her failure to cooperate with the audit. Consequently, because the employing establishment compelled appellant to participate in the audit and required her to gather tax documents, her participation in the audit constitutes a special assignment which is a compensable factor of employment.⁶ Moreover, because the employing establishment required appellant to participate in the audit as part of her specially assigned duties such participation cannot be characterized as an administrative or personnel matter.⁷ Accordingly, appellant established that her compelled participation in the audit of her personal income taxes constituted a compensable factor of employment.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.⁸ In this case, Dr. Seidman submitted the only medical opinion evidence addressing whether appellant sustained an emotional condition as a result of her coerced participation in the audits. On May 5, 1993 Dr. Seidman reviewed appellant's symptoms and conducted a psychological evaluation. He performed a Minnesota Multiphasic Inventory, reviewed a 16-personality factor test, and completed a Beck Depression Inventory. He opined that appellant was severely harmed by her work environment through apparent actions of management which were inferred through appellant as arbitrary, improper, discriminatory, threatening and hostile. He further stated that the managerial style caused a severe reactive depression, anxiety and

323 (1992).

⁶ *Paul Raymond Kuyoth*, 27 ECAB 253 (1976), *reaff'd on recon.* 27 ECAB 498 (1976).

⁷ *Id.*; *cf. Mildred Thomas*, 42 ECAB 888 (1991).

⁸ *See William P. George*, 43 ECAB 1159, 1167 (1992).

traumatic stress disorder which were totally disabling. Dr. Seidman, however, failed to explain how appellant's participation in the audit resulted in her emotional condition. Moreover, Dr. Seidman failed to provide such an explanation in his reports dated August 25 and October 5, 1993, July 30, 1994 and February 8, 1995. Although Dr. Seidman's opinion is insufficient to establish causal relationship, it constitutes substantial uncontroverted evidence in support of appellant's claim and is sufficient to require that the case be remanded for further development of the claim.⁹ On remand, the Office should prepare a statement of accepted facts and refer appellant, along with the statement and case record, to a Board-certified psychiatrist for an evaluation on whether appellant's alleged emotional condition was causally related to her participation in the audit.

The decision of the Office of Workers' Compensation Programs dated March 21, 1996 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
February 8, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁹ See *John J. Carlone*, 411 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978) The Board notes that the record contains no contrary medical evidence and that the Office did not seek advice from an Office medical adviser or refer the case to a n Office physician for a second opinion.