

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NORMA SILVA and NATIONAL INSTITUTES OF HEALTH,  
FORENSIC TOXICOLOGY DRUG TESTING LABORATORY,  
Fort Meade, MD

*Docket No. 98-637; Submitted on the Record;  
Issued February 8, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

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

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

On December 13, 1996 appellant, then a 40-year-old medical technician, filed an occupational disease claim, alleging that stress and anxiety were caused by stressful encounters with her supervisor, Captain Matthew J. Schofield. She had stopped work on December 5, 1996. Following further development, by decision dated September 16, 1997, the Office of Workers' Compensation Programs denied the claim, finding that appellant failed to establish any compensable factors of employment. The instant appeal follows.

In support of her claim, she submitted a statement dated May 28, 1997 in which she alleged problems with Capt. Schofield which began in September 1996 when he first became her supervisor at which time she had been suffering from chronic back pain as a result of her November 1994 surgery. She implied that she was inappropriately placed on "leave restriction" and that Capt. Schofield began to "build a file" on her job performance. Appellant stated that this caused memory loss, constant headaches, sleeplessness, weight loss, continuous back pains and caused her to make repeated errors. She stated that the continuous counseling by Capt. Schofield for "seemingly small incidents" affected her sense of job security and caused her to overreact in her responses. Appellant concluded that things came to a head on December 5, 1996 when she stopped work.

The employing establishment submitted a number of memoranda taken from appellant's personnel file which included a November 18, 1996 performance counseling session (which appellant refused to sign) that documented that, due to errors made by appellant, she had been decertified and required retraining. Other employing establishment memoranda included that

appellant was absent without leave, a November 21, 1996 memorandum of warning regarding leave procedures, and a November 21, 1996 notice of leave restriction. In a January 29, 1997 statement and cover letter, Capt. Schofield advised that all actions taken by appellant's supervisor were appropriate to the situation and initiated only after consultation. He noted, *inter alia*, that she had a history of formally documented performance and time/attendance problems.

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.<sup>1</sup> 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.<sup>2</sup> On the other hand, there are situations when an injury has some connection with the 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> Likewise, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in the performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.<sup>6</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345 (1996).

<sup>5</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>6</sup> *Daniel B. Arroyo*, 48 ECAB 204 (1996).

reasonably.<sup>7</sup> To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.<sup>8</sup>

Furthermore, for harassment to give rise to a compensable disability under the Act, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur. A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and should not give rise to coverage under the Act absent objective evidence that the interaction with his or her supervisor was, in fact, abusive.<sup>9</sup> In this case, appellant did not submit any evidence showing that the counseling or leave restriction were unwarranted or constituted error or abuse by the employing establishment.<sup>10</sup> There is no evidence that Capt. Schofield acted in an abusive manner toward appellant. Appellant, therefore, has not established a compensable employment factor and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.<sup>11</sup>

The decision of the Office of Workers' Compensation Programs dated September 16, 1997 is hereby affirmed.

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

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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

<sup>8</sup> *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

<sup>9</sup> *Daniel B. Arroyo*, *supra* note 6.

<sup>10</sup> *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

<sup>11</sup> As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992). The Board further notes that appellant submitted evidence to the Board with her appeal. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).