U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERVENRIA ROSS and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

Docket No. 98-1649; Submitted on the Record;
Issued February 15, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

On January 23, 1997 appellant, then a 39-year-old medical supply technician, filed a claim for occupational depression. She stated that she was moved from one section of the employing establishment to another without notice and felt discriminated against. She contended that her health problems were aggravated by management and noted that she felt she had not been treated fairly. In a March 27, 1997 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record did not establish that her emotional condition arose out of the course of her federal employment. In an April 10, 1997 letter, appellant, through her attorney, requested a hearing before an Office hearing representative, which was conducted on January 15, 1998. In a March 20, 1998 decision, the Office hearing representative found that the evidence of record was not sufficient to establish that appellant had an emotional condition arising out of the performance of her duties.

The Board finds that appellant has not established that she had an emotional condition causally related to any compensable factors of employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning

of the Act.[1] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[2] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[3]

The evidence of record shows that appellant was a dental assistant but was promoted to the position of medical supply technician in 1993. She sustained a fracture of the left third toe on October 7, 1996 and was released to return to work on November 2, 1996. On December 10, 1996 she fractured the right middle finger. Appellant received continuation of pay for the period December 11 through December 17, 1996. The employing establishment indicated that appellant was assigned light duty after the December 10, 1996 injury. Her supervisor indicated that he argued with appellant over her use of leave and requests for leave and, on December 24, 1996 he denied appellant's request for leave on the grounds that she had no leave left. The supervisor indicated that he had erred as he subsequently learned appellant's leave had been miscalculated and she had sufficient leave to cover her requests for leave. The finding that she was absent without leave on December 24, 1996, therefore, was withdrawn. She returned to normal duty on January 6, 1997 but subsequently used sick leave from January 27 through February 3, 1997, after she filed her claim for depression. She subsequently returned to her former position as a dental assistant.

At the hearing appellant indicated that when she began working as medical supply technician, she worked from 8:00 a.m. to 4:30 p.m. but she was subsequently transferred to the distribution section and her schedule was interrupted to work weekends and holidays even though she had been promised that her schedule would not be interrupted. She noted that she received notice of the transfer on the Friday before the transfer occurred. The employing establishment indicated that the transfer was due to a staffing shortage emergency but that the transfer was permanent. She contended that she was not given a required two-week notice of the transfer. She claimed that after the transfer, her supervisor showed favoritism to a male employee by always assigning her to the decontamination area where all soiled instruments were received. She also contended that she was harassed by her supervisor over her use of leave.

Appellant essentially cited three factors of employment for the cause of her condition: the transfer from one section to another section of the employing establishment; the dispute over her use of leave in December 1996; and harassment and discrimination. The first two factors are administrative actions, which are not part of appellant's actual duties and, therefore, cannot be

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

[2] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[3] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

considered compensable factors of employment unless error or abuse is shown on the part of the employing establishment. Appellant alleged that the transfer violated the notice requirements of the employing establishment, but she has not submitted any evidence to show what the notice requirement was or that the employing establishment acted contrary to that requirement. Appellant's supervisor indicated that he had placed appellant as absent without leave but subsequently withdrew that determination when he found appellant's leave had been miscalculated and she had sufficient leave to support her request for leave. This is evidence of error in the employing establishment's actions in appellant's use of leave and, therefore, is a compensable factor of employment. However, appellant has not submitted any medical evidence that would establish that this error caused or contributed to the development of her depression. She, therefore, has not established that her emotional condition was causally related to compensable factors of employment.

Appellant made a general allegation that her emotional condition was due to harassment by her supervisors. The actions of a supervisor, which an employee charaterizes as harassment may constitute factors of employment giving rise to coverage under the Act. However, there must be some evidence that such implicated acts of harassment did, in fact, occur. Mere perception of harassment or discrimination are not compensable under the Act. A claimant must establish a factual basis for allegations that the claimed emotional condition was caused by factors of employment.[4] In this case, appellant's claims of harassment arose out of the dispute over her use of leave. The evidence of record shows that although appellant was questioned about her use of leave in December 1996 but is insufficient to establish that the questioning and dispute over the use of leave arose to the level of actual harassment of appellant by her supervisor although he subsequently admitted that he erred in declaring appellant absent without leave for one day. Appellant also alleged that there was discrimination in that a male coworker was favored in job assignments in preference to her. However, she has not submitted any evidence beyond her own allegation to support her claim of discrimination. Appellant, therefore, has not established that she was subjected to harassment or discrimination on her job.

[4] *Joan Juanita Greene*, 41 ECAB 760 (1990).

The decision of the Office of Workers' Compensation Programs, dated March 20, 1998, is hereby affirmed.

Dated, Washington, D.C.
February 15, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member