

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY L. McFALL and DEPARTMENT OF AGRICULTURE,
PLANT PROTECTION QUARANTINE, Brownsville, Tex.

*Docket No. 97-854; Submitted on the Record;
Issued November 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On August 18, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained aggravated mental stress due to factors of her federal employment. By decision dated March 8, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. Appellant, through her representative, requested a hearing before an Office hearing representative. By decision dated October 15, 1996 and finalized October 16, 1996, the Office hearing representative affirmed the Office's March 8, 1995 decision. The hearing representative found that appellant had alleged a compensable factor of employment but that the medical evidence was insufficient to establish that the identified factor caused or aggravated her emotional condition.

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 his or 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

¹ 5 U.S.C. §§ 8101-8193.

factors as an employee's fear of a reduction-in-force or his 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 attributed her emotional condition to her supervisor's noncompliance with work restrictions imposed because of a nonemployment-related injury. Specifically, appellant contended that on August 12, 1994 she submitted to her supervisor, Mr. Roland Trevino, a disability certificate which restricted her to light-duty employment at a desk job.⁵ Appellant related that on August 13, 1994 Mr. Trevino ordered her to stop working on the computer and perform passenger clearance and vehicle inspections. Mr. Trevino confirmed that he instructed appellant to work outside rather than at her computer. Mr. Trevino testified in an affidavit dated August 29, 1995 that while appellant had given him the note from her physician he had not read the contents of the note. The employing establishment acknowledged that Mr. Trevino's failure to read appellant's work restrictions constituted error and the Board has held that the assignment of duties that exceed an appellant's work tolerance limitations can constitute a compensable factor of employment.⁶ Thus, as found by the Office, appellant has established a compensable factor of employment.

Appellant further contends that she sustained employment-related stress on August 15, 1994 when she observed a disciplinary letter concerning her conduct on August 13, 1994 from Mr. Trevino to his supervisor, Ms. Lisa Davis, on a computer screen in a common work area. Appellant related that she was upset that the letter was displayed in a public area and began to print the letter, at which point Mr. Trevino entered the room and ordered her to stop printing the document. Ms. Davis, in a letter dated August 27, 1996, confirmed that the computer screen which displayed the disciplinary letter was in a common work area. The assessment of appellant's performance by her supervisor is an administrative matter and is generally not

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 (1992).

⁴ *Id.*

⁵ In a disability certificate dated August 11, 1994, Dr. B.N. Lakshmikanth opined that appellant could perform limited-duty employment at any desk job beginning August 12, 1994.

⁶ See *Minnie L. Bryson*, 44 ECAB 713 (1993).

covered by the Act. Exceptions will occur, however, in those cases where the evidence discloses error or abuse on the part of the employing establishment that resulted in the employee's emotional reaction.⁷ Such a reaction cannot be labeled "self-generated." In the instant case, the Board finds that the display of private information regarding appellant's performance in a public area constituted error on the part of the employing establishment, and that appellant consequently has established a compensable factor of employment.

Appellant further attributed her emotional condition to receiving a letter of caution for her actions on August 13 and 15, 1994. As discussed above, the assessment of performance is an administrative function of the employer, not a duty of the employee, and is not compensable absent evidence that the employing establishment acted unreasonably.⁸ In the instant case, the factual evidence of record does not support a finding that the disciplinary action was erroneous. Appellant received the September 8, 1994 letter of caution for, *inter alia*, slamming a door and running into a member of the public on August 13, 1994 and for disobeying a direct order from her supervisor on August 15, 1994. Appellant has not submitted any evidence which would establish error on behalf of the employing establishment.

With certain compensable factors of employment established in this case, the issue becomes whether these incidents or conditions caused an injury. To establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to an identified compensable employment factor.⁹

In a form report dated September 14, 1994, Dr. Terence Langan diagnosed anxiety and depression with gastritis, and checked "yes" that the diagnosed conditions were caused or aggravated by employment. However, a physician's opinion on causal relation that consists only of checking "yes" to a form's question of whether appellant's condition was due to employment, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.¹⁰

In a report dated October 18, 1995, Dr. Langan stated that he had treated appellant since September 1994 for anxiety and depression "precipitated in large part by harassment at work which seems to be of an ongoing nature." Although Dr. Langan generally attributed appellant's condition to "harassment at work," he did not clarify the nature of the harassment or provide any rationale for his opinion, and thus his report is of diminished probative value.

In a form report dated November 18, 1994, Karen E. Nielsen, a psychologist, diagnosed severe major depression with suicidal ideation without psychotic features and checked "yes" that the condition was caused or aggravated by employment. As discussed above, a physician's

⁷ *Linda C. Ball*, 43 ECAB 533 (1992).

⁸ *See Arthur F. Hougens*, 42 ECAB 455 (1991).

⁹ *William P. George*, 43 ECAB 1159 (1992).

¹⁰ *Debra S. King*, 44 ECAB 203 (1992).

opinion on causal relation that consists only of checking “yes” on a form report is insufficient to establish causal relation absent a medical explanation or rationale.¹¹

The record indicates that appellant was voluntarily hospitalized for psychiatric treatment from October 3 to 17, 1994. In a discharge summary dated November 22, 1994, Dr. Gentil Salazar, a psychiatrist, diagnosed a single episode of major depressive disorder, mixed chemical dependency and mixed personality disorder traits. Without reference to specific instances, he noted that appellant had “multiple situation problems at work” and “problems with her supervisor.” As Dr. Salazar did not describe the employment factors identified by appellant as causing her condition or provide a rationalized medical opinion that attributed her condition to any of the accepted compensable factors of employment, his opinion is of little probative value.¹²

In a report dated July 25, 1996, Dr. Michael R. Anderson, a psychologist, indicated that he had recommended appellant receive treatment in a hospital for “conditions related to her work.” Dr. Anderson, however, does not reach a diagnosis or relate her problems to specific employment factors and thus his opinion is of little probative value and insufficient to establish that appellant sustained an emotional condition in the performance of duty.

In a letter dated June 20, 1995, Dr. Anderson noted that he had counseled appellant on July 19, 1995 regarding a letter of reprimand and at her request asked the employing establishment to withdraw the letter as a grievance process would further her stress. Dr. Anderson’s report is not relevant to the issue in the present case as the date of the letter of reprimand is unspecified and as his report contains no diagnosis or opinion linking any condition or disability to compensable factors of appellant’s federal employment. Appellant, therefore, has not submitted rationalized medical opinion evidence sufficient to establish that she sustained an emotional condition causally related to her employment.

¹¹ *Id.*

¹² *Arnold A. Alley*, 44 ECAB 912 (1993).

The decision of the Office of Workers' Compensation Programs dated October 15, 1996 and finalized October 16, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 23, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member