

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DARRYL C. ZEWE and U.S. POSTAL SERVICE,  
POST OFFICE, Reno, Nev.

*Docket No. 96-2408; Submitted on the Record;  
Issued July 13, 1998*

---

DECISION and ORDER

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

The issues are whether appellant established that his emotional condition was sustained in the performance of duty and whether the Office of Workers' Compensation Programs properly denied his request for an oral hearing as untimely.

On August 22, 1995 appellant, then a 44-year-old motor vehicle driver, filed a notice of occupational disease, claiming that his depression was due to his employment. The employing establishment controverted the claim and the Office informed appellant in a letter dated September 20, 1995 that he needed to submit a factual statement describing work factors which he believed contributed to his condition and a narrative medical report explaining how such work factors caused his condition.

The record contains a hospital discharge summary from Dr. Steven E. Rubin, a Board-certified psychiatrist who described appellant's week-long treatment and diagnosed bipolar and adjustment disorders, and a medical report from Dr. Bruce Spero, also a psychiatrist, who diagnosed hepatomegaly (enlargement of the liver).

On November 21, 1995 the Office denied the claim on the grounds that the medical evidence failed to establish that appellant sustained an emotional condition in the performance of duty.

In a letter dated December 11, 1995, appellant described incidents at work, which he felt caused his severe depression and resulted in his hospitalization in August and month long inpatient psychiatric treatment in October 1995.

The Office advised appellant on February 7, 1996 that his claim had been denied, that his letter indicated only that the employing establishment "was conducting business differently" than appellant had previously experienced, and that appellant needed to review his appeal rights.

On March 7, 1996 appellant requested an oral hearing. On April 10, 1995 the Office denied appellant's request as untimely filed and determined that the issue in the case could be equally well addressed by requesting reconsideration and submitting relevant evidence not previously considered that would establish an injury as alleged.

The Board finds that appellant has not met his burden of proof in establishing that his diagnosed emotional condition was sustained in the performance of duty.

Under the Federal Employees' Compensation Act,<sup>1</sup> appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>3</sup> There are distinctions regarding the type of work situation giving rise to an emotional condition that will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.<sup>4</sup> However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,<sup>5</sup> and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.<sup>6</sup>

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.<sup>7</sup> However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>8</sup>

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>2</sup> *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>4</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

<sup>5</sup> *Sharon J. McIntosh*, 47 ECAB \_\_\_\_ (Docket No. 94-1777, issued August 28, 1996).

<sup>6</sup> *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

<sup>7</sup> *Margreate Lublin*, 44 ECAB 945, 956 (1993).

<sup>8</sup> *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.<sup>9</sup> Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.<sup>10</sup> If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.<sup>11</sup>

In this case, appellant described the following incidents at work: In December 1992 his supervisor yelled at him for using the supervisor's truck; his supervisor prevented him from working desired overtime hours; in March 1992 appellant failed to obtain a higher-paying job; in October 1994 appellant was counseled about showing another employee how to use the radio; appellant had an altercation with his supervisor about use of a trailer; in April 1995 appellant was investigated about missing mail and passed a lie detector test; in July 1995 appellant was again investigated, failed a lie detector test, and was questioned extensively by postal inspectors; and on his last day at work in August 1995, appellant had a run-in with his supervisor over a missing registered mail bag.

The Board finds that none of these incidents is a compensable work factor. Appellant's reaction to his failure to be promoted is a self-generated feeling not related to any assigned duties.<sup>12</sup> His supervisors' actions and the investigation of missing mail and other valuables are administrative and personnel matters that, while generally related to employment, are functions of the employer and not duties of the employee.

Thus, the Board has held that an employee's reactions to administrative actions are not compensable unless the evidence demonstrates error or abuse on the part of the employing establishment in its administrative capacity.<sup>13</sup> Here, appellant has submitted no evidence that his

---

<sup>9</sup> *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

<sup>10</sup> *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

<sup>11</sup> *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

<sup>12</sup> See *Daniel B. Arroyo*, 48 ECAB \_\_\_\_ (Docket No. 95-62, issued November 22, 1996) (finding that while verbal altercations and a tense relationship with a supervisor may be compensable work factors if proven, appellant failed to support his allegations with probative evidence).

<sup>13</sup> *Sharon J. McIntosh*, 47 ECAB \_\_\_\_ (Docket No. 94-1777, issued August 28, 1996).

supervisors erred or acted unreasonably in any of the above incidents. Therefore, the Board finds that appellant has failed to show any error or abuse on the part of the employing establishment.<sup>14</sup>

While appellant claimed generally that his stress resulted from supervisory harassment at work, he has not alleged specific instances of harassment. There must be some evidence that harassment did, in fact, occur. Mere perceptions alone are not compensable.<sup>15</sup> Therefore, the Board finds that appellant has not established any compensable work factors under the Act and thus need not consider the medical evidence.<sup>16</sup>

The Board also finds that the Office properly denied appellant's request for a hearing as untimely filed.

The Act is unequivocal that a claimant not satisfied with a decision of the Office has a right, upon timely request, to a hearing before a representative of the Office.<sup>17</sup> The statutory right to a hearing pursuant to section 8124(b)(1) follows an initial decision of the Office.<sup>18</sup> Because subsection (b)(1) is unequivocal on the time limitation for requesting a hearing, a claimant is not entitled to such hearing as a matter of right unless his or her request is made within the requisite 30 days.<sup>19</sup>

The Office's procedures implementing this section of the Act are found in Chapter 2-1601 of the Federal (FECA) Procedure Manual. The manual provides for a preliminary review of a case by an Office hearing representative to determine whether the hearing request is timely and, if not, whether a discretionary hearing should be granted; if the Office declines to grant a discretionary hearing, the claimant will be advised of the reasons.<sup>20</sup> The Board has held that the

---

<sup>14</sup> See *Alberta Kinloch-Wright*, 48 ECAB \_\_\_\_ (Docket No. 95-1254, issued April 23, 1997) (finding that appellant's own perceptions of harassment and hostility from her supervisor were neither specific nor independently corroborated and were therefore not compensable under the Act; *Sandra F. Powell*, 45 ECAB 877, 886 (1994) (finding that an employee's mere perception of harassment or discrimination was not compensable); *Chester R. Henderson*, 42 ECAB 352, 359 (1991) (finding that appellant's mere allegation of harassment, without any witness' statement in support, was insufficient to establish that actual harassment had occurred).

<sup>15</sup> See *Sharon R. Bowman*, 45 ECAB 187 (1993).

<sup>16</sup> See *Dinna M. Ramirez*, 48 ECAB \_\_\_\_ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider psychiatric evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

<sup>17</sup> 5 U.S.C. § 8124(b); *Joe Brewer*, 48 ECAB \_\_\_\_ (Docket No. 95-603, issued March 21, 1997); *Coral Falcon*, 43 ECAB 915, 917 (1992).

<sup>18</sup> *Eileen A. Nelson*, 46 ECAB 377, 379 (1994); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.10(b) (July 1993).

<sup>19</sup> *William F. Osborne*, 46 ECAB 198, 202 (1994).

<sup>20</sup> *Belinda J. Lewis*, 43 ECAB 552, 558 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

only limitation on the Office's authority is reasonableness,<sup>21</sup> and that abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>22</sup>

In this case, appellant requested a hearing on March 7, 1996, more than four months after the November 21, 1995 decision of the Office denying his claim. Attached to the decision was a statement outlining appellant's options regarding appeal and explaining clearly that the request for a hearing must be made within 30 days of the date of the decision. Appellant responded to the November 21, 1995 decision with a letter dated December 1, 1995, but did not request a hearing in this letter. Because appellant did not request a hearing until March 7, 1996, well beyond the 30-day limit, he was not entitled to a hearing as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has the discretion to grant a hearing, and must exercise that discretion.<sup>23</sup> Here, the Office informed appellant in its April 10, 1996 decision that it had considered the timeliness matter in relation to the issue involved and denied appellant's hearing request on the basis that additional evidence on whether appellant's emotional condition was sustained in the pod could be fully considered through a request for reconsideration.

In this case, nothing in the record indicates that the Office committed any act in denying appellant's hearing request that could be found to be an abuse of discretion. Further, appellant was advised that he could request reconsideration and submit evidence in support of his claim. Finally, appellant has offered no explanation for his untimely request or any argument to justify further discretionary review by the Office.<sup>24</sup> Thus, the Board finds that the Office properly denied appellant's request for a hearing.

---

<sup>21</sup> *Wanda L. Campbell*, 44 ECAB 633, 640 (1993).

<sup>22</sup> *Wilson L. Clow*, 44 ECAB 157, 175 (1992).

<sup>23</sup> *Frederick D. Richardson*, 45 ECAB 454, 465 (1994).

<sup>24</sup> *Cf. Brian R. Leonard*, 43 ECAB 255, 258 (1992) (finding that the Office abused its discretion by failing to consider appellant's explanation regarding the untimely filing of his hearing request).

The November 21 and April 10, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
July 13, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member