

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA K. KINLER and U.S. POSTAL SERVICE,
POST OFFICE, Ama, LA

*Docket No. 02-1844; Submitted on the Record;
Issued May 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a review of the record as untimely filed.

On April 12, 2001 appellant, then a 40-year-old rural carrier, filed an occupational disease claim, alleging that job stress, supervisory harassment and an abusive work environment caused her anxiety disorder. Appellant stated that she began working on July 17, 1999, qualified as a rural carrier associate on January 29, 2000 and covered the Ama Route, which was reclassified on November 4, 2000. The route position was posted for bidding on January 9, 2001 and again on January 22, 2001 but appellant did not get the job. She alleged that her supervisor's animosity toward her because of her union activity resulted in the job going to someone else.

Appellant also alleged that she completed her 90-day probationary period at another post office before being transferred to Ama, yet the employing establishment required her to undergo another 90-day probation and she was thus deprived of all employee benefits. Appellant filed four grievances on March 10, 2001 concerning these incidents. They were denied on March 21, 2001 and appellant's union declined to pursue them further.

Finally, appellant alleged that she was forced to work one day after being in the emergency room because of poison sumac, which affected her eyesight. Appellant stated that her supervisor insisted that she find someone to drive her mail vehicle or replace her in delivering the mail the next day.

Appellant submitted statements from Ethel Matherne, who related that when she called appellant's supervisor, Janet M. Troxclair-Pritt, and asked for a job reference, she was "very rude and not helpful," saying only that appellant did her job and that Ms. Matherne would have to submit a written request. Similar statements were made by Scott Nolan and Dianne Landry.

The employing establishment and Ms. Troxclair-Pritt also submitted responses to the Office's inquiry about appellant's claim.

On July 10, 2001 the Office denied appellant's claim on the grounds that she had not established any compensable factors of employment that caused her anxiety disorder. On April 11, 2002 appellant wrote to the Office stating: "Please review my file for review of reconsideration." Appellant added that the factors she alleged as the cause of her condition related to the performance of her day-to-day duties and that her work environment caused her illness.

On June 10, 2002 the Office construed this letter as a request for a review of the written record and denied appellant's request as untimely filed, pursuant to section 8124 of the Federal Employees' Compensation Act.¹ This section provides that a claimant for compensation not satisfied with a decision is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim² or, in lieu of a hearing, a review of the written record.³

The Board finds that appellant has failed to establish that her emotional condition was sustained while in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of the Act. These injuries occur in the course of the employment but nevertheless are not covered because they are found not to have arisen out of the employment.⁵

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she 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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁶

The Board has long held that a claimant's allegations alone are insufficient to establish compensable work factors without probative and reliable evidence corroborating the allegations.⁷

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8124(b)(1).

³ 20 C.F.R. § 10.615; *Marilyn F. Wilson*, 51 ECAB 234, 236 (1999).

⁴ *Samuel Senkow*, 50 ECAB 370, 373 (1999).

⁵ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

⁶ *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

⁷ *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

The claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that she believes caused or adversely affected her condition.⁸ Personal perceptions and feelings alone are not compensable under the Act.⁹

In emotional condition cases, the Office 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 to be factors of employment and may not be considered.¹⁰ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.¹¹

In this case, appellant was frustrated by her inability to obtain a permanent position after her route was reclassified. However, such frustration is not related to appellant's regular or specially assigned work duties. Rather, hiring choices are administrative decisions, which do not directly involve an employee's ability to perform assigned duties.¹² While appellant indicated that the bidding process was investigated, appellant did not submit any evidence that the employing establishment erred in selecting someone else for the position. Therefore, her reaction to her failure to bid successfully for the Ama Route is not compensable under the Act.¹³

Similarly, appellant's allegation that her supervisor deprived her of employee benefits by ensuring that she had to undergo a second 90-day probationary period concerns a managerial procedure and is not related to work duties. Absent any evidence of error or abuse on the part of the employing establishment, administrative matters are not covered under the Act.¹⁴ Here, Ms. Troxclair-Pritt explained that she called the personnel office regarding appellant's eligibility for benefits, and a specialist explained the matter to appellant. Appellant has submitted no

⁸ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

⁹ *Earl D. Smith*, 48 ECAB 615, 650 (1997).

¹⁰ *Margaret Kryzcki*, 43 ECAB 496, 502 (1992).

¹¹ *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

¹² *Ernest J. Malagrida*, 51, EACB 287, 289 (2000).

¹³ See *Brian H. Derrick*, 51 ECAB 417, 422 (2000) (finding that the employing establishment's refusal to extend appellant's foreign tour of duty or permit him to resume his former position was not a compensable work factor under the Act).

¹⁴ *Robert Knoke*, 51 ECAB 319, 321 (2000).

evidence that the employing establishment erred in requiring her to undergo a second probationary period.¹⁵

Appellant attributed her anxiety disorder to supervisory harassment, specifically, that Ms. Troxclair-Pritt gave her the “silent treatment” three days out of five and then yelled and screamed at her, causing appellant emotional distress. Although appellant alleged that two coworkers and the people on her route were aware of the distress caused by her supervisor’s treatment of her, appellant submitted no witness statements corroborating her allegations.

Ms. Troxclair-Pritt stated that the atmosphere in the employing establishment never changed throughout the bidding process, that appellant sent flowers and a card to Ms. Troxclair-Pritt when she had cancer surgery in January 2001 and that she was never aware of any problems with appellant until March 2001 when appellant filed her grievances. Inasmuch as appellant submitted no evidence in support of her allegations, that her supervisor mistreated her, the Board finds that appellant has failed to establish these statements as factual.¹⁶

The Board finds that the Office abused its discretion in denying appellant’s request for review of the July 10, 2001 decision.

In addition to providing for a hearing or review of the written record, section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹⁷ While the Act does not entitle a claimant to a review of an Office decision as a matter of right,¹⁸ section 10.607(a) of the Code of Federal Regulations provides that a request for reconsideration may be granted if filed within one year of the date of the Office’s decision.¹⁹

As the only limitation on the Office’s authority is reasonableness, 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 deduction from established facts.²⁰

In this case, appellant’s letter requesting review was dated April 11, 2002, well within one year of the July 10, 2001 Office decision denying her claim. While appellant asked the Office to “review my file,” she also sought “reconsideration,” explained why she disagreed with the denial of her claim and offered to submit additional evidence.

¹⁵ See *William Karl Hansen*, 49 ECAB 140, 144 (1997) (finding that appellant’s frustration with the policies and procedures of management do not constitute compensable work factors absent a showing of error or abuse).

¹⁶ See *Christophe Jolicoeur*, 49 ECAB 553, 556 (1998) (finding that appellant failed to establish that his supervisor was verbally abusive).

¹⁷ 5 U.S.C. § 8128(a) (“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

¹⁸ *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

¹⁹ 20 C.F.R. § 10.607(a).

²⁰ *Linda J. Reeves*, 48 ECAB 373, 377 (1997).

The Board finds that the Office misconstrued appellant's April 11, 2002 letter as a request for a review of the written record. Appellant's letter indicated that she sought reconsideration rather than a review of the written record and her letter was dated within the one-year time frame. Thus, her request for reconsideration is still pending. Therefore, the Board will set aside the Office's June 10, 2002 decision and remand the case for the Office to consider appellant's request. After such development as the Office deems necessary, it shall issue a *de novo* decision to preserve appellant's rights of appeal.

The July 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed,²¹ the June 10, 2002 decision is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

²¹ See *John Polito*, 50 ECAB 347, 350 n.18 (1999) (because appellant failed to establish any compensable employment factors, the Board need not consider the medical evidence of record).