

**United States Department of Labor
Employees' Compensation Appeals Board**

O.L., Appellant)

and)

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, FEDERAL DETENTION CENTER,
Philadelphia, PA, Employer**)

**Docket No. 07-1726
Issued: December 7, 2007**

Appearances:

*Major Derrick P. Lynch, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 15, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated February 1, 2007 which denied her claim and a decision dated April 6, 2007 which denied her request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment; and (2) whether the Office properly denied her request for a hearing.

FACTUAL HISTORY

On August 24, 2006 appellant, then a 37-year-old correctional officer, filed a Form CA-2, occupational disease claim, alleging that she sustained anxiety and duress caused by work-related stress. She stated that she became aware of the condition on July 9, 2006 and its

relationship to her employment on August 15, 2006. Appellant did not stop work. She submitted slips showing that she had appointments on August 17 and 23, 2006, panic attack literature and a self-report regarding depression. On a return-to-work form dated August 17, 2006, Dr. Nicholas Truong, an internist, advised that appellant was under his care for anxiety and could return to work on August 23, 2006.

By letter dated October 27, 2006, the Office informed appellant of the evidence needed to support her claim. This was to include a description of the employment-related conditions or incidents that she believed contributed to her illness and a comprehensive medical report which described symptoms, a diagnosis and an opinion regarding the cause of her condition. The employing establishment was asked to respond to the claim.

In a decision dated February 1, 2007, the Office denied appellant's claim. The Office noted that she did not respond to the October 27, 2006 letter. In a request postmarked March 9, 2007, appellant, through her representative, requested a hearing. By decision dated April 6, 2007, an Office hearing representative denied the hearing request.

LEGAL PRECEDENT -- ISSUE 1

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 stress-related 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 stress-related condition.¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.² 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.³

ANALYSIS -- ISSUE 1

The Board finds that appellant did not establish that she sustained an employment-related emotional condition. An essential element of an emotional condition claim is that the claimant submit factual evidence identifying employment factors or incidents alleged to have caused or contributed to the claimed condition.⁴ By letter dated October 27, 2006, the Office informed appellant that she should provide a description of the employment-related conditions or incidents she believed contributed to her illness. She did not respond to this request. Since appellant did

¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

² *Dennis J. Balogh*, 52 ECAB 232 (2001).

³ *Id.*

⁴ *Leslie C. Moore*, *supra* note 1.

not identify employment factors she felt caused her condition, she failed to meet her burden of proof to establish that she sustained an employment-related emotional condition.⁵

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.⁶ The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,⁷ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁸ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁹

ANALYSIS -- ISSUE 2

The Office denied appellant's request for a hearing on the grounds that it was untimely filed. In an April 6, 2007 decision, the Office found that she was not, as a matter of right, entitled to a hearing as her request, postmarked March 9, 2007, had not been made within 30 days of its February 1, 2007 decision. As appellant's request was postmarked March 9, 2007, more than 30 days after the date of the February 1, 2007 decision, the Office properly determined that she was not entitled to a hearing as a matter of right as her request was untimely filed.¹⁰

The Office also has the discretionary power to grant a request for a hearing when a claimant is not entitled to such as a matter of right. In the August 30, 2006 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, 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.¹¹ In the present case, the evidence

⁵ *Id.*

⁶ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

⁹ *Claudio Vazquez*, *supra* note 6.

¹⁰ *Id.*

¹¹ *See Mary Poller*, 55 ECAB 483 (2004).

of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion. The Office therefore properly denied her request.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment. The Board further finds that the Office properly denied her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6 and February 1, 2007 be affirmed.

Issued: December 7, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board