

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE W. BERRY and U.S. POSTAL SERVICE,
POST OFFICE, Washington, D.C.

*Docket No. 97-753; Submitted on the Record;
Issued November 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

The Board has duly reviewed the evidence of record and finds that appellant has not met her burden of proof in this case.

In the present case, appellant, a postal supervisor, filed a claim on December 7, 1995 alleging that she had sustained emotional stress due to harassment and denial of training and promotional opportunities in the course of her federal employment. At the request of the Office to provide further details of her claim and supporting evidence, appellant alleged that she did not agree with numerous actions taken by her superior. Appellant stated that her superior required that she sign in when she began her shift, that he requested that she schedule all lunch periods prior to 1:30, that he questioned her leave requests, and that he denied her request for overtime work. Appellant also alleged that she wrote letters to postal management informing them of unprofessional conduct by other management employees and that she was retaliated against thereafter. Appellant further alleged that she was asked to spy on other supervisors by management. The Office denied appellant's claim by decision dated August 27, 1996 on the grounds that appellant has not established that her alleged emotional condition occurred in the performance of her federal employment.

On October 24, 1997 appellant requested a hearing before an Office hearing representative. The Branch of Hearings and Review denied appellant's request for a hearing on November 27, 1996.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional

stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability resulted from his emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.¹ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employees' Compensation Act. Nor is disability covered when it results from such factors as an employee's frustration in 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 related as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.³ As appellant has not established a compensable factor of employment in this case, the Office was not required to review the medical evidence of record.

In the present case, appellant has not alleged that her emotional condition arose from the performance of her own employment duties. Appellant has in fact stated that she was a good employee and had been acknowledged by management to be a good employee. Rather, appellant has alleged that she disagreed with actions taken by her superior. Appellant's allegations indicate that she, as a supervisor, had a different management style than her own superior. While appellant disliked supervisory actions taken regarding issues such as sign in policy, lunch break policy and leave requests, appellant has not established the compensability of such actions. Management's administrative actions regarding such issues of employment do not relate directly to the employee's performance of his or her employment duties, but rather relate to the management's administrative duties. Administrative actions do not fall within coverage of the Act except where it is established that the employing establishment either erred or acted abusively in the handling of an administrative matter.⁴ Aside from appellant's own allegations, which reflect her own perceptions, appellant has not submitted any independent corroborating evidence of error or abuse by management in any of its administrative actions. Appellant's complaints about the manner in which her superior performed his duties as a supervisor or the

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

² *Elizabeth Pinero*, 46 ECAB 123 (1994).

³ *Leroy Thomas III*, 46 ECAB 946 (1995).

⁴ *Wanda G. Bailey*, 45 ECAB 835 (1994).

manner in which he exercised his supervisory discretion fall, as a rule, outside the scope of coverage afforded by the Act.⁵

Further, while actions of an employee's superiors which constitute harassment or retaliation may constitute factors of employment giving rise to coverage under the Act, to support a claim based on harassment or retaliation there must be some evidence that such actions did, in fact, occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.⁶ Appellant has alleged that she wrote letters wherein she detailed what she believed was unprofessional behavior by management, and that management discriminated and retaliated against her thereafter. Again, appellant has not submitted any independent evidence of harassment or retaliation in this case. Appellant's own perceptions in this regard are not the basis for a compensable claim under the Act. Appellant therefore did not establish a compensable factor of employment in this case and the Office properly denied appellant's claim for compensation.

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

Section 8124(b)(1) of the Act provides as follows: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative.***"

As appellant did not request a hearing within 30 days of the August 27, 1996 compensation order, appellant is not entitled to a hearing as a matter of right. The Office, however, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely, or made after reconsideration under section 8128(a) are a proper interpretation of the Act and Board precedent. The Office, in its November 27, 1996 decision, noted that appellant's October 24, 1997 request for a hearing was untimely filed, and that consideration of the issue involved revealed that appellant could request reconsideration before the Office on the issue of fact of injury. The Office therefore properly exercised its discretion in this case.

⁵ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Sandra F. Powell*, 45 ECAB 877 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 27 and August 27, 1996 are hereby affirmed.

Dated, Washington, D.C.
November 2, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member