

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHAWN D. ISAAC and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 00-2439; Submitted on the Record;
Issued July 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed.

On December 22, 1999 appellant, then a 32-year-old city letter carrier, filed a claim indicating that he suffered stress due to a conflict with his supervisor, John Phelps, on street time on December 21, 1999. Appellant stopped work on December 22, 1999.

In a statement of January 4, 2000, appellant stated that on December 21, 1999 he requested a postal form from Mr. Phelps for an additional 30 minutes of assistance in order to complete an 8-hour day. He related that Mr. Phelps tossed the form across his desk. Appellant stated that, at approximately 2:35 p.m. that afternoon, Mr. Phelps confronted him regarding his 30-minute request for assistance during his route. A conversation ensued wherein appellant alleged that Mr. Phelps stated that he had enough time to complete his route. Appellant stated that Mr. Phelps indicated that a study, which was conducted on his route two months earlier, was half an hour under time. Appellant stated that, when he told Mr. Phelps that the route inspection two months earlier did not account for several factors, Mr. Phelps advised him that a mail count would be done that Friday and left with the 30-minute piece. Appellant stated that he was overwhelmed and stressed over the confrontation. He asserted that, although it was hard for him to concentrate, he finished his route and ended his tour at 4:00 p.m. Appellant stated that, as he was leaving, he asked Mr. Phelps whether he could have a copy of or see the study, which was completed approximately two months prior. His request was denied. He advised that he saw his physician that day and was prescribed medication. Appellant further stated that on December 23, 1999 he returned CA-16 and CA-17 forms to Mr. Phelps and was advised by Mr. Phelps that a statement concerning the events of December 21, 1999 needed to be written. Appellant alleged that Mr. Phelps insisted on writing appellant's statement and that another conflict arose when Mr. Phelps disagreed with appellant's statement.

By letter dated January 3, 2000, the employing establishment controverted the claim. It denied any abusive or threatening behavior by appellant's supervisor, Mr. Phelps. The employing establishment advised that appellant was reacting to instructions by his supervisor as it appeared that appellant had a problem accepting direct supervision and considered any constructive criticism or instruction as management harassment. The employing establishment further advised that appellant had ample time to deliver all mail and return to his office by 4:00 p.m. This was supported by a statement from Luke A. Romano, Manager Customer Service, which the Office received on January 7, 2000.

By decision dated February 28, 2000, the Office found that fact of injury was not established for the reason that appellant had not substantiated his allegations that he was threatened or harassed by his supervisor, that he had not proven that the events of December 21, 1999 occurred in the manner alleged and that he therefore had not met his burden of providing that he sustained an emotional condition in the performance of duty.

In an undated letter postmarked March 31, 2000 and received by the Office on April 4, 2000, appellant requested an oral hearing.

By letter dated April 24, 2000, appellant was advised that his case file had been received by the Branch of Hearings and Review and would be advised within 90 days if the case was in posture for a hearing.

By decision dated April 27, 2000, the Office denied appellant's request for an oral hearing on the basis that the request was untimely made.

The Board finds that appellant has not established that he sustained an emotional condition causally related to his federal employment.

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 regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Appellant has alleged harassment and intimidation by employing establishment management officials. The Board has held that actions of an employee's supervisor, which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise to coverage under the Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable

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

under the Act.² In this case, the claimed events of December 21 and 23, 1999 remain unsubstantiated as to whether Mr. Phelps' behavior towards appellant in denying a request for assistance or in filling out a statement, which are administrative/personnel functions, was confrontational, abusive or harassing. In a letter dated January 26, 2000, the Office advised appellant that the employer was controverting/challenging his claim on the basis that the supervisor was just attempting to provide instruction and was not confrontational towards him. The Office stated that appellant needed to describe in detail how the incident on December 21, 1999 occurred and that he needed to substantiate any allegations that his supervisor had threatened or harassed him. The Office advised that should the allegations of threats or harassment by the supervisor be substantiated, then appellant should provide a comprehensive medical report from a physician linking a medical diagnosis to the claimed threats and/or harassment on the date of the claimed incident. The record reflects that appellant submitted a February 4, 2000 report from Dr. Gary Arthur, a Board-certified psychiatrist, who based his diagnoses upon appellant's version of the events of December 21, 1999. Inasmuch as appellant has not substantiated his allegations of harassment or intimidation by the employing establishment regarding the claimed events of December 21, 1999, Dr. Arthur's medical report has no probative value. As there is no probative evidence to establish appellant's allegations that his confrontations with his supervisor were abusive or threatening, this allegation is not a compensable factor of employment.

The Board notes that appellant claimed that he requested 30 minutes of auxiliary assistance on December 21, 1999 as he could not complete his regularly assigned duties within his limited-duty tour. As a general rule, the exercise of supervisory discretion in an administrative capacity relates to the supervisor's performance of duties, not appellant's performance of duties and is therefore not compensable.³ Nonetheless, error or abuse by an employing establishment supervisor in an administrative or personnel matter, or evidence that the supervisor acted unreasonably in the administration of a personnel matter, may afford coverage. There is insufficient evidence that Mr. Phelps acted unreasonably in denying appellant's request for 30 minutes of auxiliary assistance. Thus, appellant's reaction to the denial of auxiliary assistance is considered self-generated, as it is not related to assigned duties.

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

Section 8124(b)(1) of the Act provides:

“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 of the Secretary.”⁴

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Daryl R. Davis*, 45 ECAB 907 (1994).

⁴ 5 U.S.C. § 8124(b)(1).

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request.⁵ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁷

Because appellant made his March 31, 2000 request for a hearing more than 30 days after the Office's February 28, 2000 decision, he is not entitled to a hearing as a matter of right. The Office considered whether to grant a discretionary hearing and correctly advised appellant that he could pursue his claim through the reconsideration process. As appellant may address the issues in this case by submitting to the Office new and relevant evidence with a request for reconsideration, the Board finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

The April 27 and February 28, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁵ 20 C.F.R. § 10.616(a).

⁶ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Rudolf Bermann*, 26 ECAB 354 (1975).