

Regarding the cause of her claimed September 8, 2006 injury, appellant stated, "After realizing that most other [Americans with Disabilities Act employees] in my office did not receive a job offer, I had difficulty breathing and concentrating. I still was sent to do route. I realized I needed not to be driving and tried to contact supervisor [to] no avail and brought route back...." Appellant stopped work on September 8, 2006 and returned to work on September 13, 2006.

In letter dated September 22, 2006, Jim McDevitt, a supervisor, controverted appellant's claim indicating that her apparent reaction to a modified letter carrier position offered by the employing establishment on September 8, 2006 was self-generated. He stated that she did not "want to deal with the new job offer." The record contains a copy of the modified letter carrier position which was to start on September 9, 2006.

Appellant submitted a September 11, 2006 report in which Dr. Fernando V. Mata, an attending Board-certified psychiatrist, indicated that she reported being harassed at work on an unspecified date. Dr. Mata provided the notation, "panic disorder -- work exacerbated anxiety."

In an October 19, 2006 letter, the Office requested that appellant submit additional factual evidence in support of her claim within 30 days of the date of the letter. On October 10, 2006 appellant asserted that Mr. McDevitt delayed signing her claim for compensation for eight days as a form of retaliation for her filing of grievances. In a November 9, 2006 statement, a coworker indicated that a supervisor told her on September 8, 2006 that appellant "was very upset and made a comment that she was going to crash her vehicle." Appellant also submitted several reports of attending physicians which were produced between September and November 2006.

In a November 27, 2006 decision, the Office denied appellant's emotional condition on the grounds that she did not establish any compensable employment factors. The Office indicated that receiving a job offer was an administrative function and was not compensable. The appeal rights attached to the decision advised appellant that if she wished to request a hearing before an Office hearing representative she should send such a request within 30 days to the provided address of the Office's Branch of Hearings and Review in Washington, DC.

On December 4, 2006 the Office received a November 12, 2006 letter in which appellant asserted that coworkers harassed her by subjecting her to abusive language and telling her that she needed to quit or retire because she could not perform her job. She alleged that the job offer she received was improper because it required her to move to a new location, did not have a regular day off and involved the duties of a newly-hired employee. Appellant claimed that the employing establishment did not adequately care for her after she became upset on September 8, 2006.¹

In a December 21, 2006 letter, appellant requested a hearing before an Office hearing representative. She mailed this letter to a P.O. Box in London, KY, designated for District 6 of the Office. In early January 2007, an official from District 6 advised appellant that she sent her hearing request to the wrong address. In an envelope postmarked January 10, 2007, appellant

¹ Appellant also submitted additional medical evidence.

sent her December 21, 2006 letter to the Office's Branch of Hearings and Review in Washington, DC.

In a May 3, 2007 decision, the Office denied appellant's request for a hearing. The Office found that appellant's January 10, 2007 hearing request was made more than 30 days after the date of issuance of its prior decision dated November 27, 2006 and, thus, she was not entitled to a hearing as a matter of right. The Office further stated that it was exercising its discretion and denied appellant's hearing request on the basis that she could request reconsideration and submit additional evidence in support of her claim that she sustained an employment-related emotional condition.

LEGAL PRECEDENT -- ISSUE 1

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.² 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁴ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, 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 factors of employment and may not be considered.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition due to incidents at work on September 8, 2006. In a November 27, 2006 decision, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must initially review whether appellant's alleged incidents or conditions of employment are covered employment factors under the terms of the Act.

Regarding the cause of her claimed September 8, 2006 injury, appellant stated, "After realizing that most other [Americans with Disabilities Act employees] in my office did not receive a job offer, I had difficulty breathing and concentrating. I still was sent to do route. I realized I needed not to be driving and tried to contact supervisor [to] no avail and brought route back...." Although the Office provided her with an opportunity to do so, appellant did not provide any additional information about the events of September 8, 2006 within the time allotted. It appears that appellant objected to a job offer, modified duty; however, she did not provide any description of the job offer or indicate why she apparently objected to it.⁸ In a November 2006 statement, a coworker indicated that a supervisor told her on September 8, 2006 that appellant "was very upset and made a comment that she was going to crash her vehicle." However, this statement did not provide any identification of the parties involved or rise to the level of verbal abuse. Appellant's burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected her claimed emotional condition, but she has failed to meet this burden of proof.⁹

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.¹⁰

⁷ *Id.*

⁸ Moreover, the Board notes that the provision of a job offer is an administrative or personnel matter which generally would not fall within the coverage of the Act because it is unrelated to the employee's regular or specially assigned work duties. Such a matter will only be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. *See Richard J. Dube*, 42 ECAB 916, 920 (1991). Appellant did not submit any evidence showing that the employing establishment committed error or abuse with respect to a job offer.

⁹ *See supra* note 5 and accompanying text. Appellant asserted that her supervisor delayed signing her claim for Office compensation for eight days as a form of retaliation for her filing of grievances. The Board has held that the handling of compensation claims is an administrative or personnel matter which would not be compensable in the absence of error or abuse by the employing establishment. *See George A. Ross*, 43 ECAB 346, 353 (1991). Appellant has not shown error or abuse by the employing establishment in the handling of her compensation claim.

¹⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... 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."¹¹ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.¹² The date of filing of a hearing request is fixed by postmark or other carrier's date marking.¹³

The Board has held that the Office, 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹⁴ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,¹⁵ when the request is made after the 30-day period for requesting a hearing,¹⁶ and when the request is for a second hearing on the same issue.¹⁷

ANALYSIS -- ISSUE 2

Appellant requested a hearing before an Office representative in a December 21, 2006 letter which was sent to the Office's Branch of Hearings and Review in an envelope postmarked January 10, 2007. The date of the filing was fixed by the January 10, 2007 postmark on the envelope.¹⁸ Appellant previously sent this letter to a P.O. Box in London, KY, designated for District 6 of the Office, but this mailing did not effectuate her hearing request because it was not sent to the address designated in the appeal rights attached to the Office's November 27, 2006 decision.

Appellant's January 10, 2007 hearing request was made more than 30 days after the date of issuance of the Office's prior merit decision dated November 27, 2006 and, thus, appellant was not entitled to a hearing as a matter of right. The Office properly found that appellant was not entitled

¹¹ 5 U.S.C. § 8124(b)(1).

¹² *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

¹³ *See* 20 C.F.R. § 10.616(a).

¹⁴ *Henry Moreno*, 39 ECAB 475, 482 (1988).

¹⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁷ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁸ *See supra* note 13 and accompanying text.

to a hearing as a matter of right because her January 10, 2007 hearing request was not made within 30 days of the Office's November 27, 2006 decision.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its May 3, 2007 decision, properly exercised its discretion by stating that it was denying appellant's hearing request on the basis that her case could be addressed by requesting reconsideration and submitting additional evidence in support of her claim that she sustained an employment-related emotional condition. 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.¹⁹ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

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. The Board further finds that the Office properly denied appellant's request for a hearing under section 8124 of the Act.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 3, 2007 and November 27, 2006 decisions are affirmed.

Issued: December 12, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).