

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY T. PLEASANT and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, NEW ORLEANS OFFICE, New Orleans, La.

*Docket No. 96-181; Submitted on the Record;
Issued April 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On April 6, 1995 appellant filed a claim alleging that, on that same date, undue stress, aggravation and harassment caused her to suffer severe headaches and, sharp pain in the neck and her recently operated-on back. Appellant related that the cause of her injury was a surprise request for a "fitness-[for]-duty" report.

By letter dated June 9, 1995, the Office requested additional information, including information related to harassment stemming from the fitness-for-duty request. Appellant was allowed 30 days to respond.

In a decision dated July 10, 1995, the Office rejected appellant's claim on the basis that fact of injury was not established.

Appellant responded with a statement indicating that she experienced stress from the receipt of a surprise "fitness-for-duty," request which she claimed was illegally signed by a supervisor, George J. Hamilton. She stated that the document was illegally circulated throughout her office and that the supervisor yelled at her. Appellant also submitted medical reports documenting prior back injuries.

On August 2, 1995 the Office indicated that this information was insufficient to establish appellant's claim and, pursuant to appellant's request, forwarded the claim for a written review of the record.

In a decision dated September 29, 1995, the Office hearing representative affirmed the Office's July 10, 1995 decision. The hearing representative found that the fitness-for-duty report

was an administrative matter and that appellant failed to establish that the employing establishment erred or acted abusively in the matter.

On October 11, 1995 appellant requested a hearing.

In a decision dated November 27, 1995, the Office denied appellant's request for a hearing because appellant already had a review of the written record and she could submit additional evidence on reconsideration.

Initially, the Board finds that appellant failed to establish that she sustained an emotional condition causally related to her 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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand where disability results from an employee's emotional reaction to her 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.¹

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 factors of her federal employment.² To establish her claim 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.³

In the present case, appellant has not substantiated a compensable factor of employment. The general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.⁴ Appellant has alleged abusive behavior by a supervisor, but, despite the Office's request, she has not provided sufficient detail

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

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Donald E. Ewals*, 45 ECAB 111 (1993).

and supporting evidence to substantiate this allegation. The Board accordingly finds that appellant has not substantiated a compensable factor of employment and that the Office properly denied her claim. Since no compensable factor of employment has been established, the Board will not address the medical evidence.⁵

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

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."⁶

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.⁷ 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,⁸ when the request is made after the 30-day period for requesting a hearing⁹ and when the request is for a second hearing on the same issue.¹⁰ 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.¹¹

In the present case, appellant's October 11, 1995 hearing request was made after she had already received a written review of the record by an Office hearing representative and, thus, appellant was not entitled to a hearing as a matter of right. 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 November 27, 1995 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the issue in the case could be resolved by the submission of additional evidence. 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

⁵ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ 5 U.S.C. § 8124(b)(1).

⁷ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁸ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁹ *Herbert C. Holley*, 33 ECAB 140-42 (1981).

¹⁰ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹¹ *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

probable deduction from established facts.¹² 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 5 U.S.C. § 8124.

The decisions of the Office of Workers' Compensation Programs dated November 27, September 29 and July 10, 1995 are affirmed.

Dated, Washington, D.C.
April 8, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).