

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. STEELE and U.S. POSTAL SERVICE,
POST OFFICE, Silver Spring, Md.

*Docket No. 96-2297; Submitted on the Record;
Issued August 18, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied his request for an oral hearing on his claim by an Office hearing representative.

On September 15, 1995 appellant, then a 44-year-old manager, customer service, filed a claim for compensation alleging that he first became aware that his stress from anxiety was due to his employment on October 19, 1994. He alleged that he was given less than one day's notice to report to the Postmaster of the Hyattsville office for a six-month detail to develop his interpersonal skills; that when he inquired about training classes on interpersonal skills upon his arrival at Hyattsville he was informed there was no mention of training or curriculum or mentoring; that he was still running an office, which was inconvenient in providing day-care for his children; he wrote a letter to the Postmaster at Silver Spring inquiring into the lack of interpersonal developmental training on October 31, 1995 and did not receive a response until January 5, 1996 suggesting a meeting; he had difficulty concentrating on his detail because the Silver Spring Postmaster kept trying to get him to return to the Silver Spring post office, which appellant felt was troubled, by applying pressure to appellant's managers; the Silver Spring Postmaster issued a letter of warning to appellant nine months after he had left the Silver Spring office for failure to properly perform his duty, failure to follow orders and unauthorized expenses; and he was instructed by the district manager to return to the Silver Spring office.

In an attending physician's report (Form CA-20) dated September 14, 1995, Dr. Adolph W. Johnson, Jr., an attending Board-certified family physician, diagnosed anxiety and stress disorder due to conflicts with appellant's supervisor.

By decision dated February 6, 1996, the Office denied appellant's claim on the grounds that his emotional condition was not sustained while in the performance of duty. The Office determined that none of the factors alleged by appellant were compensable factors of employment. The attached statement of review rights advised that any request for a hearing

must be made “within 30 days after the date of this decision as determined by the postmark of your letter.”

In a fax sheet received on March 13, 1996 and dated March 12, 1996, appellant requested an oral hearing on his claim before an Office hearing representative and submitted a report from Dr. David J. Gardner, an attending Board-certified psychiatrist, in support of his claim. In a report dated March 12, 1996, Dr. Gardner opined that appellant should not return to the jurisdiction of the current Silver Spring Postmaster.

In a fax cover sheet received on March 27, 1996, appellant in a letter dated March 12, 1996 requested an oral hearing and provided a witness list. Appellant also submitted reports dated October 6, 1995 and March 12, 1996 by Dr. Gardner and some evidence already contained in the record.

In a decision dated April 18, 1996, the Office found that appellant’s request for an oral hearing was untimely filed. The Office nonetheless considered the matter in relation to the issue involved and denied appellant’s request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

As the Board observed in the case of *Lillian Cutler*,¹ workers’ compensation law does not cover each and every illness that is somehow related to one’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 situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability resulted from his or her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his or her work. On the other hand, there are disabilities having some kind of causal connection with the employment that are not covered under workers’ compensation law because they are not found to have arisen out of employment, such as when disability results from 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.

The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. The Board has also generally held that allegations alone by a claimant are insufficient without evidence corroborating the allegations.² Mere perceptions and feelings of harassment or

¹ 28 ECAB 125, 129-31 (1976).

² *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.³

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act.⁴ Error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter may afford coverage.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

Appellant attributes his claimed condition to actions taken by the Postmaster such as being given less than one day's notice to report to another detail for development of interpersonal skills, that upon arrival at his new posting he was informed that there was no training and he would be performing his usual duties and was issued a Letter of Warning for failure to properly perform his duties, follow orders and for unauthorized expenses. The letter was issued nine months after his departure from the Silver Spring office. Appellant also attributes his condition to being instructed to return to the Silver Spring office by the district manager. These actions appellant attributes to having caused his claimed condition are administrative in nature. The Board has held that determinations by the employing establishment concerning promotions, changes in grade and changes in the work environment are administrative in nature and not a duty of the employee.⁷ The Board has also held that job transfer or assignments are an administrative function of the employer and do not relate directly to the day-to-day or specially-assigned duties of the employee.⁸ The evidence of record does not establish error in these administrative matters.

Next, appellant attributes his claimed condition to his difficulty concentrating on his detail because of the Silver Spring's postmaster's efforts to get him to return to Silver Spring. A mere perception of harassment is not compensable and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁹ In this case, there is no evidence corroborating appellant's allegation that the Postmaster at the Silver Spring office made the efforts alleged by appellant to have him return to work at the Silver Spring office.

³ *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

⁴ *See Norman A. Harris*, 42 ECAB 923 (1991); *Samuel F. Mangin*, 42 ECAB 671 (1991).

⁵ *Id.* *Kathleen D. Walker*, 42 ECAB 603 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Minnie L. Bryson*, 44 ECAB 713 (1993); *William P. George*, 43 ECAB 1159 (1992); *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

⁸ *See Goldie K. Behymer*, 45 ECAB 508 (1994)

⁹ *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992); *Kathleen D. Walker*, *supra* note 5.

Appellant also attributes his alleged condition to the inconvenience he suffered by working at the Landover Office and having to provide day-care for his children. Appellant's emotional reaction arises from a frustration at not being able to work in a particular environment, which is not related to the performance of appellant's work. The Board has long held, however, that frustration from not being permitted to work in a particular environment is not covered under the Act.¹⁰

As the record in this case fails to establish that the employing establishment erred or acted abusively or unreasonably in the administrative actions implicated by appellant, the Board will affirm the Office's February 6, 1996 decision rejecting his claim for compensation.

The Board also finds that the Office properly denied appellant's request for an oral hearing on his claim before an Office hearing representative.

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.”¹¹

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.¹² The Office has discretion, however, to grant or deny a request that is made after this 30 day period.¹³ 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.¹⁴

Because appellant made his March 13, 1996 request, for a hearing more than 30 days after the Office's February 6, 1996 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.¹⁵

¹⁰ See also *Eileen P. Corigliano*, 45 ECAB 581 (1994).

¹¹ 5 U.S.C. § 8124(b)(1).

¹² 20 C.F.R. § 131(a)(b)

¹³ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁴ *Rudolph Bermann*, 267 ECAB 354 (1975).

¹⁵ The Board has held that a denial of a hearing on these grounds is a proper exercise of the Office's discretion. E.g. *Jeff Micono*, 39 ECAB 617 (1988).

The April 18 and February 6, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 18, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member