

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PATRICK L. KAHAWAIOLAA and U.S. POSTAL SERVICE,  
POST OFFICE, Hilo, Hawaii

*Docket No. 97-41; Submitted on the Record;  
Issued December 14, 1998*

---

DECISION and ORDER

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

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

On May 29, 1995 appellant, then a 49-year-old postal worker, filed an occupational disease claim alleging that he experienced stress and depression as a result of his federal employment. In an accompanying narrative statement, appellant stated that his discovery that an outside government entity such as the Federal Bureau of Investigation, State of Hawaii or County of Hawaii could somehow influence his working relationship with his employer, the United States Postal Service, created a great deal of stress and anxiety for him, in addition to the stress he already felt from dealing with the employing establishment management itself. He further stated that he felt that others at the employing establishment were trying to discredit and discriminate against him because he was a native Hawaiian and was trying to resolve long-standing abuses towards his land and his people. In additional statements, appellant catalogued several incidents in which he felt his supervisor had discriminated against him and treated him in a disrespectful manner. Appellant submitted supporting medical evidence from his treating physicians.

In response to appellant's allegations, the employing establishment submitted narrative statements from the postmaster and appellant's immediate supervisor, each of whom refuted appellant's contentions.

After fully developing the factual evidence, the Office issued a decision on January 12, 1996 rejecting appellant's claim. The Office found that the claimed emotional and physical stress had not occurred in the performance of duty.

By letter postmarked February 14, 1996, appellant requested an oral hearing. In a decision dated March 25, 1996, the Office denied appellant's request on the grounds that it was untimely. By letters dated April 18 and May 3, 1996, appellant requested reconsideration of the

Office's March 25, 1996 decision. In a decision dated May 31, 1996, the Office denied appellant's application for review on the grounds that the evidence submitted in support of his application was repetitious, cumulative and irrelevant.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>1</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>2</sup>

Workers' compensation law is not applicable 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. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>3</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>4</sup>

In this case, appellant submitted several narrative statements and other evidence to the record which contain various allegations and identify employment incidents which he believes constituted harassment, discrimination and inappropriate behavior on the part of his supervisor, Mr. Don Takeuchi, and the postmaster, Ms. Sharon Rapoza.

The Board has held that mere perceptions or feelings do not constitute compensable factors of employment,<sup>5</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>6</sup> To establish entitlement

---

<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *See Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>6</sup> *Mary A. Sisneros*, 46 ECAB 155 (1994).

to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>7</sup> Other than appellant's own statements, the record does not contain any factual support for appellant's allegations. Appellant's supervisor, Mr. Takeuchi, submitted a statement in which he explained that on several occasions when he attempted to reprimand appellant for inappropriate conduct, appellant had become enraged and verbally abusive. The postmaster, Ms. Rapoza, also submitted a narrative statement in which she stated that in each instance where Mr. Takeuchi had reprimanded appellant, Mr. Takeuchi was following proper office policy and procedure and was neither harassing nor discriminating against appellant. In addition, with respect to a specific altercation between appellant and Mr. Takeuchi which she had witnessed, Ms. Rapoza stated that contrary to appellant's assertions, while appellant himself was yelling and swearing very loudly, Mr. Takeuchi spoke on a low firm voice and did not swear or treat appellant in a disrespectful manner. A claim based on verbal altercations or a difficult relationship with a supervisor must be supported by the record.<sup>8</sup> Therefore, in the absence of evidence substantiating his claims, appellant did not establish that harassment or discrimination occurred. Furthermore, where, as in this case, the evidence demonstrates that the employing establishment has neither erred nor acted abusively in administrative or personnel matters, coverage will not be afforded.<sup>9</sup>

In conclusion, as appellant failed to submit sufficient evidence to corroborate his claim to establish that the employing establishment erred or acted abusively, he has not established a compensable factor of employment that is substantiated by the record and therefore has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>10</sup>

The Board further finds that the Office did not abuse its discretion in denying appellant's requests for an oral hearing.

Section 8124(a) of the Federal Employees' Compensation Act provides, in pertinent part, that 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."<sup>11</sup> 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 the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. 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, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which

---

<sup>7</sup> See *Donald E. Ewals*, 45 ECAB 111 (1993); *Anthony A. Zarcone*, 44 ECAB 751 (1993).

<sup>8</sup> See *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>9</sup> See *Sharon R. Bowman*, 45 ECAB 187 (1993).

<sup>10</sup> 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 (1992).

<sup>11</sup> 5 U.S.C. § 8124(a).

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.<sup>12</sup>

In this case, the Office issued its decision denying appellant's claim for compensation benefits on January 12, 1996. Appellant's letter requesting a hearing was postmarked February 14, 1996 which was beyond 30 days from the date that the January 12, 1996 decision was issued. Because appellant did not request a hearing within 30 days of the Office's January 12, 1996 decision, he was not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.<sup>13</sup> In this case, the Office advised appellant that it considered this request in relation to the issue involved and the hearing was denied on the basis that the issues in the claim could be equally well resolved by a request for reconsideration. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>14</sup> There is no evidence of an abuse of discretion in the denial of the hearing request in this case.

Accordingly, the decisions of Office of Workers' Compensation Programs dated May 31, March 25 and January 12, 1996 are hereby affirmed.

Dated, Washington, D.C.  
December 14, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>12</sup> *Henry Moreno*, 39 ECAB 475 (1988).

<sup>13</sup> *William F. Osborne*, 46 ECAB 198 (1994); *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>14</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).