

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURO SANCHEZ, II and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, Calif.

*Docket No. 96-1443; Submitted on the Record;
Issued July 29, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing; (2) whether the Office met its burden of proof in terminating appellant's compensation effective November 29, 1995.

The Board has duly reviewed the case record and finds that the Office met its burden of proof to terminate compensation benefits.

In the present case, the Office accepted appellant claim for an adjustment order on June 9, 1989. Appellant received temporary total disability benefits from December 12, 1988 through February 17, 1989 and intermittently from February 23 through September 20, 1989. Appellant returned to work in February 1989 and filed a separate claim in May 1993 (No. 13-1015754) for a stress-related condition resulting from events allegedly contributing to his condition since the first claim (No. 13-875348). The Office denied that claim on March 4, 1994 and appellant appealed. Appellant continued to be treated, however, for claim No. 13-875348 which is the subject of this appeal. The Office sent appellant with a statement of accepted facts dated March 7, 1994 to Dr. Douglas M. Harper, a Board-certified psychiatrist and neurologist, for a second opinion evaluation. In the statement of accepted facts, the Office identified incidents that were established as factual but not occurring within appellant the performance of appellant's federal employment and others which did occur within appellant's federal employment. Examples of the latter were appellant being intermittently assigned to temporary detail as a management trainee which, in effect, prevented him from fulfilling his regular duties of providing supplies to contract stations feeling overwhelmed and confused when he had to repair the folding machine and respond to several requests from the postmaster regarding completion of his usual tasks and being unable, as supplier, to provide the postmaster a satchel when asked for it.

In his report dated May 2, 1994, Dr. Harper considered appellant's history of injury, performed a physical examination, and opined:

“[Appellant] is suffering from no medical condition as it might relate to incidents accepted as having occurred within the performance of his federal duty. His ongoing subjective symptoms, which have been variously described as [s]ituational [d]isorder, [p]ost [t]raumatic [s]tress [d]isorder, and [m]ajor [d]epression, have been described and treated in the context of his perception of being a victim of abuse, harassment, and discrimination.... It must again be emphasized that appellant himself made it very clear that in November of 1988, he was doing his job, was involved with management training, and in fact, would seek out additional activities to keep himself busy; was energized by this whole process and was able to complete his performance. He did not feel threatened, pressured, or concerned about his job performance at all, nor the demands placed upon him.”

He stated that he saw no indication of any condition even beginning to approach post traumatic stress disorder and stated “job stressors and work pressures were specifically excluded as a stressor when considering such a diagnosis.” Dr. Harper stated that appellant does not require work limitations and his current employment was not leading to any aggravation of or deterioration in his mental state. He also stated that appellant was no in need of medical treatment as a result of “accepted incidents of his federal employment.”

In a report dated October 1, 1990, Dr. Jaylene Kent, a psychologist, stated that appellant had not been responsive to his brief treatment program and perhaps he should seek treatment in the community that might better be able to meet his needs.

In a report dated October 30, 1992, Dr. Celeste Wiser, a psychiatrist, stated that appellant was under his care for severe major depression and that in the next year appellant would need psychotherapy and medication in order to function safely. He stated that appellant's emotional difficulties appeared to be directly related to his job frustrations since 1988 and were gradually worsening. Appellant also submitted work evaluation reports from Dr. Wiser dated from November 20, 1992 through February 26, 1993 in which Dr. Wiser diagnosed severe major depression and assessed appellant's ability to work. He stated that appellant's condition was consistent with his history of alleged discrimination in the promotion packet he received.

Appellant submitted a letter dated November 8, 1994 challenging the Office's proposed notice of termination dated October 25, 1994. By letter dated November 26, 1994, appellant's representative stated that he disagreed with Dr. Harper's report and alleged that numerous actions by management including rejecting appellant's request for leave, denying appellant overtime even though he had no restrictions and the postmistress observing and reprimanding appellant for talking caused or contributed to appellant's condition. He also submitted a packet of administrative documents, some of which related to appellant's work performance and some of which were standardized.

By decision dated November 29, 1995, the Office denied the claim stating that the weight of the medical evidence of record established that the appellant has no continuing disability nor impairment causally related to factors of his federal employment.

By letter dated January 4, 1996, appellant requested an oral hearing before an Office hearing representative.

By decision dated January 31, 1996, the Office's Branch of Hearings and Review denied appellant's request for a hearing, stating that appellant's letter requesting a hearing was postmarked January 8, 1996, more than 30 days after the Office issued the November 29, 1995 decision, and that therefore appellant's request was untimely. The Branch informed appellant that he could request reconsideration by the Office and submit additional evidence.

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

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant... 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."¹ Section 10.131 of the Office's federal regulations implementing this section of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.² Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulation.

Section 10.131(a) of the Office's regulations³ provides in pertinent part that "a claimant is not entitled to an oral 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..."

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.⁴ 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

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.131.

³ 20 C.F.R. § 10.131(a).

⁴ *Henry Moreno*, 39 ECAB 475, 482 (1988).

hearing,⁵ when the request is made after the 30-day period for requesting a hearing,⁶ and when the request is for a second hearing on the same issue.⁷

In the present case, despite the Office's asserting that the postmark date of appellant's hearing request was January 8, 1996 evidence of the postmark date is not in the record. The Board has held that if the envelope bearing the postmark date has not been retained, then the request is timely filed if it is date-stamped by the Office within 30 days of the issuance of the decision.⁸ The letter containing appellant's hearing request was dated January 4, 1996, and the date stamp by the Office was March 5, 1996. Therefore, appellant's hearing request was made more than 30 days after the date of issuance of the Office's November 25, 1995 decision, and the Office's Branch of Hearings and Review was correct in stating in that decision that appellant was not entitled to a hearing as a matter of right. The Branch of Hearings and Review informed appellant that she could submit additional evidence through a request for reconsideration. The Branch of Hearings and Review exercised its discretionary powers in denying appellant's request for a hearing.

The Board also finds that the Office met its burden of proof to terminate compensation benefits.

Once the office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.⁹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.¹⁰

An alleged employment-related emotional condition is compensable when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation.¹¹ Perceptions and feelings alone are not compensable.¹² If the Board finds that appellant's allegations are unrelated to the employee's

⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁷ *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

⁸ *See Donna A. Christley*, 41 ECAB 90, 91 (1989); *Delphine L. Scott*, 41 ECAB 799, 803 (1990).

⁹ *Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

¹⁰ *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

regular- or specially-assigned work duties, they do not fall with the coverage of the Act unless the evidence discloses error or abuse on the part of the employing establishment.¹³

In the present case, the May 2, 1994 opinion of Dr. Harper, the second opinion physician, constitutes the weight of the medical evidence. Dr. Harper opined that appellant's ongoing subjective symptoms whether described as situational disorder, post-traumatic stress disorder and major depression were described and treated in the context of appellant's perception of being a victim of abuse, harassment and discrimination. He stated that in November 1988 appellant was seeking out additional activities at work, was energized by the process, and did not feel threatened, pressured, or concerned about his job performance of the demands placed upon him. Dr. Harper stated that appellant had no medical condition arising from job performance, that appellant did not require work limitations and current employment was not leading to any aggravation of or deterioration in his mental state.

The October 1, 1990 medical report of Dr. Kent stated that appellant had not been responsive to his brief treatment program and therefore does not address causation. In his October 30, 1992 report, Dr. Wisner, diagnosed severe major depression and stated that appellant's emotional difficulties appeared to be directly related to his job frustrations since 1988 and were gradually worsening. He, however, did not provide a rationalized opinion for his conclusion. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.¹⁴ Dr. Wisner's conclusory statement is, therefore, of diminished probative value and is insufficient to support appellant's claim. Moreover, in his work evaluation reports dated from November 10, 1992 through February 26, 1993, Dr. Wisner also did not provide a rationalized medical opinion relating appellant's depression to his federal employment. Therefore, those reports are also not probative. Further, appellant has not submitted any evidence to show there were any additional factors of employment not mentioned in the Office's March 7, 1994 statement of accepted facts that could have contributed or caused his condition and did not present medical evidence to support that they did. In the absence of evidence corroborating that the alleged incidents occurred and medical evidence to support they caused or aggravated his condition, appellant cannot establish his ongoing claim.¹⁵ Inasmuch as Dr. Harper's opinion is sufficiently well rationalized in establishing that appellant's no longer suffered from any work related disability, it constitutes the weight of evidence in this case, and the Office met its burden of proof in terminating benefits.

¹³ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062); see *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹⁴ See *William C. Thomas*, 45 ECAB 591, 594 (1994).

¹⁵ See *Sharon R. Bowman*, 45 ECAB 187, 195 (1993).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 31, 1996 and November 29, 1995 are hereby affirmed.

Dated, Washington, D.C.
July 29, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member