U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. ROBEY and U.S. POSTAL SERVICE,
BULK MAIL UNIT, Arlington, Va.

Docket No. 97-483; Submitted on the Record;
Issued October 20, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition due to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing before an Office representative.

The Board has duly reviewed the case on appeal and finds that appellant has not established that she sustained an emotional condition due to factors of her federal employment.

Appellant filed a claim on June 5, 1996 alleging that she suffered from depression and anxiety due to job-related stress and undue harassment by her supervisor, Mr. George P. Zaun. After undertaking development, the Office denied appellant's claim by decision dated August 5, 1996.

By letter postmarked September 12, 1996, appellant requested an oral hearing before an Office representative. In a decision dated October 9, 1996, the Office denied appellant's request as untimely.

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 concept 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 is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[1] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

decisions regarding training[2] are generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[3]

In this case, appellant attributed her emotional condition to undue harassment by her supervisor, Mr. George P. Zaun. Appellant specifically stated that when she asked Mr. Zaun if she could attend training, he told her it was not necessary. Appellant further stated that Mr. Zaun threatened to abolish her position because it was apparent to the employing establishment that there was no need to employ two clerks in the bulk mail unit. Appellant did not submit any evidence to substantiate her allegations of harassment.

By letter dated July 5, 1996, Mr. Zaun responded to appellant's allegations, explaining that all necessary training had been provided to appellant. Mr. Zaun further stated that while it was true the employing establishment had proposed to abolish one of the two bulk mail unit positions, the proposal also included the creation of a new position with the same hours and days off, and this new position had been discussed with both bulk mail unit employees.

The Board has held that mere perceptions of harassment or discrimination do not constitute a compensable factor of employment, and that there must be evidence that harassment did in fact occur.[4] Mr. Zaun has explained the employing establishment's actions in a statement disputing appellant's specific allegations. As appellant failed to provide reliable, probative and substantial evidence that the harassment occurred as alleged, she failed to meet her burden of proof in establishing this factor of employment. In addition, as noted above, it is well settled that administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regularly or specially assigned work duties of the employee. Unless there is evidence of error or abuse in the administration of a personnel matter, coverage will not be afforded.[5] Matters involving the training or discipline of employees are administrative functions.[6] Mr. Zaun stated that appellant had received all necessary training. Appellant has not submitted evidence which establishes that the employing establishment erred in its training practices. Furthermore, with respect to appellant's allegation that Mr. Zaun threatened to abolish her position, disability is not compensable for the fear of losing one's position, and appellant has again not provided any evidence of error or abuse on the part of the employing establishment.[7]

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[2] *Jose L. Gonzalez-Garced*, 46 ECAB ___ (Docket No. 93-1903, issued March 1, 1995).

[3] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

[4] *Edward J. Meros*, 47 ECAB __ (Docket No. 94-1636, issued May 24, 1996).

[5] *Vaile F. Walders*, 46 ECAB __ (Docket No. 93-2284, issued June 21, 1995).

[6] *Jose L. Gonzalez-Garced, supra* note 2.

[7] *See Lillian Cutler, supra* note 1.

As appellant has failed to submit the necessary evidence to support her allegations of harassment and administrative error, she has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board further finds that the Office properly denied appellant's request for an oral hearing before an Office representative.

Following the Office's August 5, 1996 decision denying compensation benefits, by letter postmarked September 12, 1996, appellant requested an oral hearing before an Office representative.

In a decision dated October 9, 1996, the Office denied appellant's request for a hearing on the grounds that it was untimely. The Office further informed appellant that it had determined that the issue in her claim could be equally well resolved by submitting new evidence on reconsideration.

Section 8124(b) of the Federal Employees' Compensation Act, concerning entitlement to a hearing before an Office representative states: "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."[8]

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 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.[9]

In this case, the Office issued its decision denying appellant's claim for compensation benefits on August 5, 1996. Appellant's letter requesting a hearing was postmarked September 12, 1996 which was beyond 30 days from the date that the August 5, 1996 decision was issued.[10] Because appellant did not request a hearing within 30 days of the Office's August 5, 1996 decision, she was not entitled to a hearing under section 8124 as a matter of right.

[8] 5 U.S.C. § 8124(b)(1).

[9] *Henry Moreno*, 39 ECAB 475 (1988).

[10] Under the Office's regulations implementing section 8124(b), the date the request is filed is determined by the postmark of the request; *see* 20 C.F.R. § 10.131(a).

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.[11] 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.[12] There is no evidence of an abuse of discretion in the denial of the hearing request in this case.

The decisions of the Office of Workers' Compensation Programs dated October 9 and August 5, 1996 are affirmed.

Dated, Washington, D.C.
October 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[11] *William F. Osborne*, 46 ECAB 198 (1994); *Herbert C. Holley*, 33 ECAB 140 (1981).

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