

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAREY L. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Irvine, CA

*Docket No. 97-2198; Submitted on the Record;
Issued December 2, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition causally related to factors of her federal employment; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on April 11, 1997; and (3) whether the Office abused its discretion by denying appellant's request for an oral hearing on May 23, 1997.

On June 9, June 20 and June 29, 1995 appellant, then a 37-year-old letter carrier, filed notices of traumatic injury alleging that she suffered an emotional condition due to a June 8, 1995 interview by postal inspectors related to her June 12, 1995 receipt of a notice of her eligibility for positions in the Alhambra Post Office and her June 28, 1995 receipt of a letter denying her request for advanced sick leave.¹

In a letter dated June 6, 1995, the employing establishment informed appellant that she was eligible for positions as a mailhandler and a clerk/carrier in its Alhambra Post Office.

In a statement dated June 9, 1995, appellant recounted her June 8, 1995 interview with the postal inspectors. Appellant indicated that fifteen armed inspectors entered her work site and that two inspectors performed her interview. She stated that inspectors informed her that she need not participate in the interview. Appellant stated that the inspectors repeatedly asked her personal questions, specifically questions involving her relationship with her supervisor, James Burns. She stated that the inspectors also asked whether either appellant or Mr. Burns performed work for his organization, the Postal Managers of America (PMA), while working for the employing establishment. Appellant noted that the inspectors later seized her work computer. She indicated that the inspectors also delved into aspects of her employment, such as her career

¹ The Office combined these claims on August 2, 1995 and indicated that it would develop the claim as an occupational disease claim.

progression, duties, hours and pay. Appellant stated that as a result of this interview she sustained an emotional condition.

On June 9, 1995 Dr. Philip M. Carman, appellant's treating clinical psychologist, diagnosed appellant with an adjustment disorder with mixed emotional features and found her totally disabled until June 26, 1995.

On June 12, 1995 appellant requested an advancement of 240 hours of sick leave. On June 16, 1995 Acting Postmaster Gus Henggeler denied this request on the basis that it was not supported by medical documentation or approved by the official in charge.

On June 16, 1995 postal inspectors R.J. Edwards and R.E. Miller described the circumstances surrounding the June 8, 1995 interview with appellant. They stated that the postal inspection service was contacted by Arthur Martinez, Santa Ana district manager, and Manuel Botelo, Santa Ana district manager of human resources, on April 21, 1995 regarding possible improprieties and abuse of position by Postmaster James Burns. They stated that both the managers provided information indicating that appellant and Mr. Burns were involved in a personal relationship during a period in which appellant received higher pay for overtime, night differential, and premium Sunday work. The allegations were supported by personnel records documenting appellant's higher pay and indicating that appellant and Mr. Burns shared the same residence. Moreover, they stated that a letter from David Jones, President, Branch 737, National Association of Letter Carriers, also indicated that appellant was receiving preferential pay based on her relationship with Mr. Burns. The inspectors also indicated that Mr. Martinez alleged that Mr. Burns used employing establishment time and supplies to support his organization, the PMA. They stated 10 inspectors visited the employing establishment on June 8, 1995, and that inspectors J.L. Hoskins and S.M. Delaney interviewed appellant twice concerning the alleged improprieties.

In two separate memorandum, Inspectors Hoskins and Delaney confirmed interviewing appellant on June 8, 1995. The inspectors indicated that, after informing appellant that her participation was voluntary, they proceeded to ask her questions pertaining to the allegations they were investigating.

In a letter dated June 17, 1995, appellant requested that the Office address its medical questions to Dr. Carman and its nonmedical questions to her representative, Phil Prince, because direct contact with the employing establishment caused her stress and anxiety.

On June 23, 1995 appellant wrote to the Office requesting 240 hours of advanced sick leave. In support of her request, she submitted Dr. Carman's June 23, 1995 report diagnosing severe post-traumatic stress disorder and temporary disability until August 28, 1995.

On June 27, 1995 Acting Postmaster Mr. Henggeler again denied appellant's request for advanced sick leave. He based his denial on the nature of appellant's illness, the circumstances associated with her absence, the documentation furnished and her status as a short-term employee. He stated that he was not convinced that appellant would return to duty.

Appellant subsequently submitted requests for Equal Employment Opportunity (EEO) counseling in which she asserted that the notice of her eligibility for positions at the Alhambra Post Office and the denial of her requests for sick leave were sent by the employing establishment to threaten, discriminate and inflict emotional harm.

By decision dated September 13, 1995, the Office rejected appellant's claim because it was not established that her alleged medical condition arose out of the performance of duty.

On October 20, 1995 appellant requested reconsideration. She repeated her allegations concerning the June 8, 1995 interview and also asserted the investigation stemmed from a vendetta between district manager Martinez and supervisor Burns. Finally, appellant stated that the denial of her sick leave was abusive and designed to harm her financially.

On November 3, 1995 appellant filed a notice of occupational disease² alleging that she suffered an emotional condition stemming from the June 8, 1995 "invasion" of her workplace. In an undated statement accompanying this claim, she indicated that she was confronted by Ray Jordon, a carrier, in February 1994 and asked whether she was kissing Supervisor Robert Dickson in his vehicle while working on a Saturday. Appellant stated that this made her upset and sick to her stomach. She repeated earlier allegations.

By decision dated November 22, 1995, the Office reviewed the merits of the case and found that evidence submitted in support of the application was not sufficient to warrant modification of the previous decision.

On August 5, 1996 appellant requested reconsideration.

In support of her request for reconsideration, appellant submitted a November 9, 1995 letter to the Equal Employment Opportunity Commission (EEOC) and reiterated her allegations concerning the June 8, 1995 interview. She filed an EEOC complaint with her letter.

Appellant also submitted several requests for counseling from the EEOC in which she related her emotional condition to false statements made by the employing establishment regarding her claim, to letters from the employing establishment demanding the repayment of money she erroneously received for continuation of pay, to the employing establishment's requirement that she attend a meeting regarding her future employment on December 4, 1995 with an attorney, to a letter of removal she received from the employing establishment and to a solicitation of interest to apply for other jobs she received from the employing establishment.

Appellant also submitted answers responding to a questionnaire from the National Labor Relations Board (NLRB) which addressed her union's handling of grievances against the employing establishment and only tangentially addressed factors which she considered caused her emotional condition. She, however, did indicate that she also suffered stress as a result of accusations that she had affairs with Supervisors Dickson and Burns.

² The Office subsequently determined that this claim was a "duplicate" and deleted the file number.

By decision dated August 30, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision.

On October 7, 1996 appellant requested reconsideration. In support of her request, appellant submitted a February 1, 1996 employing establishment letter to district manager Martinez proposing to remove him for sexual harassment and interfering in an investigation, conduct unrelated to appellant's claim for an emotional condition. She also submitted Mr. Martinez's February 20, 1996 response to the allegations against him and an April 15, 1996 letter from the employing establishment downgrading Mr. Martinez for his offenses.

By decision dated October 24, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that the investigation and subsequent termination of appellant were administrative actions which could not be considered in the performance of duty without evidence of error or abuse on behalf of the employing establishment. The Office noted that the events surrounding Mr. Martinez's demotion were not relevant to her claim.

On March 12, 1997 appellant again requested reconsideration. In support, she submitted a decision from the Merit Systems Protection Board (MSPB) in which it affirmed the employing establishment's decision to demote Mr. Martinez for sexual harassment and interference with the investigation of his behavior. The decision did not involve appellant's claim for an emotional condition in any way. Appellant also indicated that depositions taken from Mr. Martinez in the MSPB case would establish that Mario Gallardo and Manuel Botello, employing establishment employees, lied about her claim in processing it for the employing establishment.

On March 27, 1997 appellant requested an oral hearing.

By decision dated April 11, 1997, the Office ordered that the request for review be denied because the evidence submitted in its support was immaterial and irrelevant. In an accompanying memorandum, the Office indicated that the evidence appellant submitted did not directly relate to the administrative actions she alleged caused her emotional condition.

By decision dated May 23, 1997, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that she previously requested reconsideration and therefore was not entitled to an oral hearing as a matter of right. The Office conducted a limited review and also denied appellant's request on the grounds that the issue in the case could be addressed equally well by requesting reconsideration and submitting new, relevant evidence.

The Board finds that appellant has 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 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 deemed 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 or to hold a particular position.³

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered by the medical specialist.⁴ When a claimant fails to implicate a compensable factor of employment the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits under the Federal Employees' Compensation Act, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.⁵

Appellant attributed her emotional condition to a June 8, 1995 investigation conducted by the employing establishment's inspectors in response to allegations that she received increased pay due to a relationship with her supervisor, Mr. Burns, and to allegations that they performed work for the PMA while also working for the employing establishment.

The Board has held that investigations are an administrative function of the employing establishment that do not involve an employee's regular or specially assigned duties and are therefore not considered to be an employment factor.⁶ Appellant's reaction to this investigation is not a compensable employment factor. An employing establishment must retain the right to investigate if wrongdoing is suspected.⁷ As an investigation is generally related to the performance of an administrative function of the employer and not the employee's regular or specially assigned work duties, it is not compensable unless there is evidence that the employer erred or acted abusively.⁸ In the present case, appellant alleged that the postal inspectors acted abusively by asking personal questions and by seizing her computer. The evidence submitted is insufficient to establish error or abuse on the part of the inspectors in the matters pertaining to relationship with her supervisor which impacted her pay and whether they worked for an outside organization while working at the employing establishment. The investigators did not act

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Barbara Bush*, 38 ECAB 710 (1987).

⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁶ *Jimmy B. Copeland*, 43 ECAB 339 (1991).

⁷ *Larry J. Thomas*, 44 ECAB 291 (1992).

⁸ *Id.* Investigations into alleged illegal or improper acts are not within an employee's performance of duty. *Arthur F. Hougens*, 42 ECAB 455 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

unreasonably by posing personal questions to appellant or in seizing her computer. Appellant also alleged that the investigation was a “vendetta” by district manager Martinez. However, because appellant failed to submit any affirmative evidence of such a vendetta, this assertion of abuse is not established as factual.⁹

Appellant also asserted that the employing establishment harassed her by sending her notices of positions that she was eligible to work in at the Alhambra Post Office. In this regard, the employing establishment sent appellant a letter dated June 6, 1995, indicating that she was eligible for positions as a mailhandler and a clerk/carrier in its Alhambra office. The notice sent by the employing establishment concerning appellant’s eligibility to transfer to these positions is an administrative matter.¹⁰ Moreover, because appellant failed to submit any corroborating evidence that the employing establishment acted in error or abusively in this matter, she failed to establish that this incident constituted a compensable factor of employment.¹¹

Appellant also asserts that her emotional condition resulted from the employing establishment’s denial of her request for sick leave. She requested an advancement of 240 hours of sick leave on June 12, 1995. On June 12, 1995 Acting Postmaster Henggeler denied the request because it was not supported by adequate medical documentation or approved by an official in charge. On June 17, 1995 appellant requested that she not receive any more correspondence from the employing establishment due to her emotional condition. Nevertheless, appellant again requested advanced sick leave on June 23, 1995. In response to this request, the employing establishment again denied appellant’s sick leave based on her status as a short term employee.

Matters concerning leave are also administrative functions of the employer and are generally not compensable absent evidence of error or abuse.¹² In this case, appellant presented no evidence that the employing establishment acted unreasonably with regard to her request for advanced sick leave. The employing establishment merely responded to appellant’s request and provided valid reasons disapproving the leave. Appellant presented no evidence to support her assertion that the leave was denied either to harass her or cause her emotional harm. She therefore failed to establish the employing establishment’s denial of her sick leave constituted a compensable factor of employment.

Appellant also asserted that her emotional condition stemmed from gossip she heard concerning her alleged relationships with supervisors Dickson and Burns. The Board has held that an appellant’s fear of gossip and rumors was a personal frustration which was not related to her job duties or requirements and, therefore, was not compensable.¹³ Consequently, appellant’s response to this gossip is not compensable.

⁹ *Larry J. Thomas, supra* note 7.

¹⁰ *See generally Goldie K. Behymer, 45 ECAB 508 (1994).*

¹¹ *Joe E. Hendricks, 43 ECAB 850 (1992).*

¹² *Joe L. Wilkerson, 47 ECAB 604 (1996).*

¹³ *Gracie A. Richardson, 42 ECAB 850 (1991).*

Finally, appellant filed several EEO counseling requests relating her emotional condition to false statements made by employing establishment personnel regarding her claim, to letters from the employing establishment demanding the repayment of money she erroneously received for continuation of pay, to the employment establishment's requirement that she attend a meeting on December 4, 1995 with an attorney, to a letter of removal she received from the employing establishment, and to a solicitation of interest to apply for other jobs she received from the employing establishment. These administrative or personnel matters are administrative functions of the employer and are not related to appellant's regular or specially assigned duties.¹⁴ Consequently, appellant must provide evidence establishing that the employing establishment erred or acted abusively in carrying out these administrative functions.¹⁵ Although appellant requested EEO counseling over this matter, the record is devoid of any evidence establishing that the employing establishment erred or acted abusively in these matters. Accordingly, appellant failed to establish that these administrative matters constituted compensable factors of employment.

Because appellant failed to present evidence sufficient to establish that her emotional condition arose from any compensable factors of employment, she failed to meet her burden of proof of establishing she sustained an emotional condition causally related to her federal employment.¹⁶

The Board also finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on April 11, 1997.

Under section 8128(a) of the Act,¹⁷ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,¹⁸ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

¹⁴ *Vaile F. Walders*, 46 ECAB 822 (1995).

¹⁵ *Joseph G. Cutrufello*, 46 ECAB 285 (1994).

¹⁶ Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁷ 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.138(b)(1).

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.¹⁹

In support of appellant's request for reconsideration prior to the Office's April 11, 1997 decision, appellant provided a decision from the MSPB in which it affirmed the employing establishment's decision to demote Mr. Martinez for sexual harassment and interference in an investigation completely unrelated to appellant's claim. In fact, the MSPB decision contained no information relevant to establishing appellant's claim that she sustained an emotional condition stemming from a compensable factor of employment. Appellant also stated that depositions taken from Mr. Martinez in the MSPB case would establish that employing establishment employees lied about her claim. She, however, provided no evidence supporting this assertion and explaining the relevance of this information to her claim. Accordingly, as appellant failed to submit any new relevant and pertinent evidence prior to the Office's April 11, 1997 decision, the Office did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits in that decision.

The Board also finds that the Office did not abuse its discretion by denying appellant's request for an oral hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides 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."²⁰ 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.²¹ 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.

In *Gus N. Rodes*,²² the Board found that the Office did not abuse its discretion in denying a claimant's hearing request as the request under section 8124 occurred after the claimant sought reconsideration of his claim pursuant to section 8128.²³ It noted that the claimant was not entitled to a hearing as a matter of right because he had exercised his right to reconsideration. The Board also held that the Office did not abuse its discretionary authority by denying the request for an oral hearing. In this case, the Office properly found that appellant did not have the right to a hearing because the Office had previously addressed appellant's requests for reconsideration.²⁴ Moreover, the Office properly exercised its discretion and determined that a

¹⁹ 20 C.F.R. § 10.138(b)(2).

²⁰ 5 U.S.C. § 8124(b)(1).

²¹ 20 C.F.R. § 10.131.

²² 43 ECAB 268 (1991).

²³ 5 U.S.C. § 8128.

²⁴ *Id.*

hearing was not necessary as the issues could be addressed upon an additional request for reconsideration. The Office therefore properly denied appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated May 23 and April 11, 1997 and October 24 and August 30, 1996 are affirmed.

Dated, Washington, D.C.
December 2, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member