U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL J. RUTTER and DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEMS, FEDERAL CORRECTIONAL INSTITUTE, Beckley, W.Va.

Docket No. 97-1623; Submitted on the Record;
Issued February 10, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained employment-related stress; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a hearing.

On April 29, 1996 appellant, then a 28-year-old bakery supervisor, filed an occupational disease claim, alleging that on April 12, 1996 he had an employment-related stress attack. In an attached statement, he noted that when he began feeling ill he went to the employing establishment physician. He left work early and went to his personal physician the next day. By letter dated June 24, 1996, the Office informed appellant of the type of information needed to support his claim. By decision dated November 26, 1996, the Office denied the claim finding that the medical evidence failed to establish that appellant sustained an injury causally related to the April 12, 1996 incident. In a letter dated December 27, 1996 and postmarked December 30, 1996, appellant requested a hearing and, by decision dated February 11, 1997, the Office denied her request as untimely. The instant appeal follows.

In support of his claim, appellant submitted statements in which he generally stated that overwork, lack of training, conflicting instructions from administration and lack of answers to his concerns led to the stress attack. He also submitted witness statements that indicated that he had been ill on April 12, 1996, medical evidence that consisted of laboratory test results and an employing establishment clinic note dated April 12, 1996 in which a physician's assistant, E.J. Chipi, diagnosed anxiety, stating that appellant "described a stressful situation at work." Appellant also submitted memoranda listing concerns he wished to discuss with the employing establishment.

The Board finds that appellant has not established that he sustained stress in the performance of duty causally related to factors of employment.

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.[1] 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.[2]

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.[3] 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.[4]

The initial question is whether a claimant has alleged compensable employment factors as contributing to an emotional condition. Part of a claimant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which the claimant believes caused or adversely affected the condition for which compensation is claimed. If a claimant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[5]

Generally, reactions to actions taken in an administrative capacity are not compensable. But 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.[6] The Board has held that training, or lack thereof, is an administrative matter and there was no indication in this case that the

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *See Bernard Snowden*, 49 ECAB ___ (Docket No. 95-1670, issued October 23, 1997).

[6] *See Abe E. Scott*, 45 ECAB 164 (1993).

employing establishment acted unreasonably in not providing further training for appellant.[7] While overwork can be a compensable employment factor,[8] here appellant provided no corroboration that he was, in fact, overworked. Regarding appellant's contention that he sustained an emotional condition due to a conflict between his personal recommendations and the policies and procedures of the employing establishment, his emotional reaction resulted from his own desire to work within a particular work environment and from his frustration in his failure to effect desired changes. As these did not relate to any requirement of his assigned duties, his reaction did not arise in the performance of duty.[9] Finally, the Board notes that even if had appellant established a compensable factor of employment, the record is devoid of any physician's opinion that appellant has an emotional condition. The only report diagnosing an emotional condition is an April 12, 1996 treatment note from E.J. Chipi and the report of a physician's assistant is entitled to no weight because physician's assistants are not physicians pursuant to section 8101(2) of the Act.[10] Appellant, therefore, failed to establish that he sustained an emotional condition causally related to factors of employment.

The Board further finds that the Office did not abuse its discretion in denying appellant's hearing request.

The Office denied appellant's request for a hearing on the grounds that it was untimely. In its decision dated February 11, 1997, the Office stated that appellant was not, as a matter of right, entitled to a hearing since his request had not been made within 30 days of its November 26, 1996 decision. The Office noted that it had considered the matter in relation to the issue involved and indicated that this could be addressed through a reconsideration application.

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.[11] In the present case, on appeal to the Board, appellant is contending that the Office mailed both decisions to the incorrect address. The Board notes, however, that the record does not contain a change of address until March 3, 1997. Appellant's request for a hearing was postmarked December 30, 1996, more than 30 days after the date of issuance of the Office's prior decision dated November 26, 1996. Thus, the Office was correct in stating in its February 11, 1997 decision that appellant was not entitled to a hearing

[7] *See Mildred D. Thomas*, 42 ECAB 888 (1991).

[8] *See Frank A. McDowell*, 44 ECAB 522 (1993).

[9] *See generally, William Karl Hansen*, 49 ECAB ___ (Docket No. 95-2925, issued October 23, 1997).

[10] 5 U.S.C. § 8101(2); *see Lyle E. Dayberry*, 49 ECAB ___ (Docket No. 95-3065, issued March 2, 1998).

[11] *Henry Moreno*, 39 ECAB 475, 482 (1988).

as a matter of right because his request had not been made within 30 days of the Office's November 26, 1996 decision.[12]

While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, in its February 11, 1997 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that appellant's claim could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[13] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs dated February 11, 1997 and November 26, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 10, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] On appeal appellant provided a copy of what appears to be an envelope from the Department of Labor with postmarks dated July 24 and 25, 1996. There is nothing in the record, however, to indicate what was contained in the envelope.

[13] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).