

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN L. ELLIOTT and U.S. POSTAL SERVICE,  
POST OFFICE, Fresno, CA

*Docket No. 98-273; Submitted on the Record;  
Issued November 23, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' hearing representative properly denied appellant's request for subpoenas.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated and made final on July 17, 1997 that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

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

Section 8126 of the Federal Employees' Compensation Act<sup>1</sup> states, "The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may (1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles." This section of the Act gives the Office discretion to grant or reject requests for subpoenas. The Office's regulation on subpoenas states, in part, "When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses."<sup>2</sup>

The Office hearing representative noted that appellant failed to demonstrate that the testimony of her witnesses, including the testimony of Leonard J. Uriarte, which would have

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<sup>1</sup> 5 U.S.C. § 8126.

<sup>2</sup> 20 C.F.R. § 10.134(a).

supported the fact that appellant was monitored more than most employees, could not be obtained by means other than the issuance of a subpoena. The hearing representative further found that appellant's argument that Mr. Uriarte feared retaliation from Postmaster Hawkins, and thus would only reveal the names of the supervisors at a hearing, was unconvincing since any testimony provided by the witness would be incorporated into the transcript that is submitted to the employing establishment.

To establish that the Office abused its discretion, appellant must show manifest error, prejudice, partiality, intentional wrong, an unreasonable exercise of judgment, illogical action, or action that would not be taken by a conscientious person acting intelligently. The mere showing that the evidence should support a contrary conclusion is insufficient to prove an abuse of discretion.<sup>3</sup> The Board finds no abuse of discretion in the finding of the Office hearing representative that appellant had failed to show that issuance of the requested subpoenas was necessary for a full presentation of the case. Moreover, it is noted that although appellant argued that the hearing representative limited her rights to a fair hearing by not allowing all of her witnesses to testify, the hearing representative held the record open for the submission of statements from the witnesses who appeared at the hearing but did not have the opportunity to testify but no such statements were received.

The decision of the Office of Workers' Compensation Programs dated July 17, 1997 is affirmed.

Dated, Washington, D.C.  
November 23, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> See *Darlene Menke (James G. Menke, Sr.)*, 43 ECAB 173 (1992).