U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VAN R. GOODMAN and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

Docket No. 98-2467; Submitted on the Record;
Issued March 16, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that he sustained an emotional condition causally related to compensable factors of his federal employment; (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely; and (3) whether the Office's refusal to reopen appellant's case for merit review constituted an abuse of discretion.

On June 26, 1997 appellant, then a 44-year-old clerk, filed a claim alleging that he sustained emotional stress causally related to his federal employment. Appellant stated on his claim form that since June 4, 1997 management had decreased his work hours to two hours per day. Appellant stated that he had been a light-duty employee for four years and management was harassing him concerning his physical limitations and repeatedly prevented him from working. Appellant asserted that he felt management was trying to force him out of his job. In a narrative statement, appellant asserted that the Lafayette Jackson, manager of the plant, was trying to force him out of his job. Appellant stated that Mr. Jackson discriminated between light-duty employees and limited-duty employees. Appellant also asserted that the process of applying for a light-duty position is confusing and frustrating and he filed several grievances with the Equal Employment Opportunity Commission, APWU Union and the Merit System Protection Board. No copies of the grievances were provided.

The employing establishment responded to appellant's allegations, noting that appellant was no longer on limited duty for a prior on-the-job injury, but was assigned light-duty (nonjob-related illness or injury) in accordance with the light-duty policy. Light-duty assignments were granted due to the needs of the service and did not guarantee 8 hours of work per day nor 40 hours per week. Appellant was given light-duty assignments to accommodate his nonjob-related injury on April 10, 1993. He was subsequently provided intermittent light-duty assignments pursuant to contractual provisions. The last light-duty assignment was for the period of June 29 through July 13, 1997, based on appellant's temporary medical restrictions which limited standing up to 2 hours. Appellant's manager, Ada Binion, asserted that on or about June 1997,

mail processing managers decided to limit employees holding light-duty assignments with restricted standing to work only the hours that they were able to stand, if there was no work available. Ms. Binion stated that appellant's work assignments were reduced by his supervisor to two hours per day from June 4 through 27, 1997. She stated that this decision was based on operational needs. Ms. Binion noted that the employing establishment only had one mail processing operation that provided "sit-down" work. She noted that she was unaware of any conflicts appellant was having with the plant manager, supervisors, or employees. Ms. Binion stated that Mr. Jackson, the plant manager, was not involved with the administration of light-duty assignments and that appellant has had little or no contact with Mr. Jackson. She stated that the number of work hours granted to light-duty employees was determined on a day-to-day basis. Ms. Binion asserted that, as appellant had not requested light duty since June 27, 1997, he would not have any knowledge as to whether light duty was available for eight hours a day.

By decision dated December 2, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish an injury arising in the performance of duty. In a letter postmarked January 31, 1998, appellant requested an oral hearing on his claim. In a decision dated March 25, 1998, the Office denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process. By letter dated April 23, 1998, appellant requested reconsideration. By decision dated June 1, 1998, the Office denied appellant's request for reconsideration without merit review of the claim.

The Board has reviewed the case record and finds that appellant has not established an injury in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by factors of his federal employment.[1] To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[2]

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a

[1] *Pamela R. Rice*, 38 ECAB 838 (1987).

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

requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

In the present case, appellant has alleged that the reduction in his work hours due to medical restrictions constituted harassment and contributed to the development of a stress-related condition. Accordingly, appellant's allegation of the reduction in work hours relates to an administrative action taken by the employing establishment. Although the handling of such personnel matters is generally related to employment, it is an administrative function of the employer, not a duty of the employee.[4] An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.[5] Although appellant has alleged error by his supervisor, he has not submitted any probative evidence establishing error or abuse in this case. Ms. Binion responded to appellant's allegations and explained the basis upon which work was assigned to accommodate employees on limited duty. She denied that appellant had conflicts with Mr. Jackson. Ms. Binion stated that appellant has had little or no contact with Mr. Jackson and that Mr. Jackson was not involved with the administration of the light-duty assignments. She further noted that appellant, along with other employees who requested light duty, were aware that the light-duty accommodation might consist of less than 8 hours a day or 40 hours in a week. The evidence of record is insufficient to establish error or abuse in an administrative action in this case. With respect to a general allegation of harassment, there is no evidence establishing appellant's allegations in this case.[6] An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.[7] In this case, it appears that the employing establishment stated that work was not available and that they limited hours for all employees on light duty.

Accordingly, the Board finds that appellant has not substantiated a compensable factor of employment in this case. Since appellant has not established a compensable work factor, the Board need not address the medical evidence.[8]

The Board also finds that the Office's Branch of Hearings and Review properly denied appellant's request for a hearing.

Section 8124(b)(1) of the 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

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

[4] *Anne L. Livermore*, 46 ECAB 425 (1995).

[5] *See Sharon R. Bowman*, 45 ECAB 187 (1993).

[6] A claimant must establish a factual basis for a claim of harassment by supporting the allegations with probative and reliable evidence. *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

[7] *Helen P. Allen*, 47 ECAB 141 (1995).

[8] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[9] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[10]

In the present case, the Office issued its decision on December 2, 1997. As noted above, the Act is unequivocal in setting forth the time limitation for a hearing request. Appellant's request for a hearing was postmarked January 31, 1998 and thus was outside the 30-day statutory limitation. Since appellant did not request a hearing within 30 days, he was not entitled to a hearing under section 8124 as a matter of right.

Even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion.[11] In the present case, the Office exercised its discretion and denied the request for a hearing on the grounds that appellant could pursue the issues in question by requesting reconsideration and submitting additional evidence. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[12] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.[13]

In his April 23, 1998 letter requesting reconsideration, appellant stated that he had more evidence to submit in support of his claim, which would further explain the cause and effect of the conditions of his occupational disease and how it has affected him. However, the evidence to

[9] 5 U.S.C. § 8124(b)(1).

[10] *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

[11] *Herbert C. Holley*, 33 ECAB 140 (1981).

[12] 20 C.F.R. § 10.138(b)(1).

[13] 20 C.F.R. § 10.138(b)(2); *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

which appellant referred was not submitted with his reconsideration request.[14] Inasmuch as appellant failed to submit any new and relevant medical evidence or advance substantive legal contentions in support of his request for reconsideration, appellant's reconsideration request is insufficient to require the Office to reopen the claim for further consideration of the merits. The Office properly denied reopening appellant's claim for review on the merits.

The decisions of the Office of Workers' Compensation Programs dated June 1, 1998, March 25, 1998 and December 2, 1997 are affirmed.

Dated, Washington, D.C.
March 16, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[14] The record reflects that the Office received new evidence from appellant pertaining to his claim on June 15, 1998. In a July 6, 1998 letter, the Office acknowledged that they were in receipt of appellant's correspondence and evidence received after the final decision of June 1, 1998 and advised appellant to follow his appeal rights as they were unable to take action on the new evidence. Inasmuch as this evidence became part of the record after the Office rendered its June 1, 1998 decision, it constitutes new evidence which may not be reviewed for the first time on appeal; *see* 20 C.F.R. § 501.2(c).