

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN R. RIVKIN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Falls Church, VA

*Docket No. 99-1376; Oral Argument Held March 9, 2000;
Issued May 12, 2000*

Appearances: *Eileen R. Rivkin, pro se; Sheldon G. Turley, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained an emotional condition causally related to compensable factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

In the present case, appellant filed a claim on April 21, 1998, alleging that she sustained a traumatic stress disorder as a result of her federal employment. Appellant stated on the claim form that her new supervisor arrived with a preconceived agenda to destroy appellant's career, that she was not transferred or detailed as per her request and that she was subject to a discriminatory, hostile, harassing work environment.

By decision dated October 6, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish a compensable work factor. In a letter dated and postmarked November 6, 1998, appellant requested an oral hearing on her claim. By decision dated December 10, 1998, the Office's Branch of Hearings and Review determined that appellant's request was untimely and, therefore, she was not entitled to a hearing as a matter of right. The Office further stated that the issue in the case could equally well be addressed by requesting reconsideration and submitted new and relevant evidence.

The Board has reviewed the record and finds that appellant has not established an employment-related emotional condition.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or

adversely affected by factors of her federal employment.¹ To establish her claim that she 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 her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her 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 requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

In the present case, appellant alleged that actions by her supervisor contributed to an emotional condition; she briefly referred to a discriminatory, hostile and harassing work environment and a denial of a request for a transfer. The Office requested, by letter dated June 30, 1998, that appellant submit additional evidence regarding her claim. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁵ The Board also notes that 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.⁶

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

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

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

⁴ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁵ *Helen P. Allen*, 47 ECAB 141 (1995).

⁶ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

There is no indication that appellant submitted supporting evidence in this case.⁷ The evidence submitted from the employing establishment, which includes statements from appellant's supervisor and coworkers, does not support appellant's claim.

In the absence of any probative evidence of harassment, discrimination, or error or abuse in an administrative capacity, the Board finds that appellant has not established a compensable work factor in this case. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.⁸

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

Section 8124(b)(1) of the Act provides in pertinent part:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title 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."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 this case, appellant disputes that the date of the Office's decision was October 6, 1998, because the date was altered by handwriting without being initialed. The decision does contain a handwritten "6," but it is clearly legible and there is no evidence that it does not accurately represent the date of the decision.¹¹ The record, therefore, contains a decision that is dated October 6, 1998, with no probative evidence presented that any other date is appropriate as the date of issuance in this case. The Board, therefore, finds that October 6, 1998 is the date of issuance of the Office decision. Appellant had 30 days from October 6, 1998 to submit a timely request for a hearing. In this case, the letter and postmark date of the hearing request was November 6, 1998, which is 31 days after the issuance date. Accordingly, the Office properly found that appellant was not entitled to a hearing as a matter of right.

Although appellant's request for a hearing was untimely, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.¹² In the December 10, 1998 decision, the Office advised appellant that it had considered the matter in

⁷ The Board's jurisdiction is limited to evidence that was before the Office at the time of its decision 20 C.F.R. § 501.2(c). The Board cannot consider evidence submitted after the October 6, 1998 decision.

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

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ See *William F. Osborne*, 46 ECAB 198 (1994).

¹¹ It appears that the initial typed date was October 1, 1998.

¹² See *Herbert C. Holley*, 33 ECAB 140 (1981).

relation to the issue involved and the hearing was denied on the grounds that appellant could resolve the issue by requesting reconsideration and submitting relevant evidence. This is considered a proper exercise of the Office's discretionary authority.¹³ There is no evidence of an abuse of discretion in this case.

The Board notes that the record contains a decision from the Office's Branch of Hearings and Review dated April 21, 1999, issued while the Board had jurisdiction over the case. In accord with the Board's holding *Douglas E. Billings*, this decision is null and void.¹⁴

The decisions of the Office of Workers' Compensation Programs dated December 10 and October 6, 1998 are affirmed.

Dated, Washington, D.C.
May 12, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Mary B. Moss*, 40 ECAB 640, 647 (1989).

¹⁴ 41 ECAB 880, 895 (1990). The Director acknowledges on appeal that the April 21, 1999 decision is null and void.