

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWEN GILDER and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 00-1834; Submitted on the Record;
Issued April 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.¹

On September 17, 1999 appellant, then a 60-year-old mailhandler, filed a traumatic injury claim alleging that she sustained an emotional condition causally related to her federal employment. She alleged that on August 11, 1999, Regina Miller, her supervisor, accompanied by another supervisor and group leader, ordered her to leave her work location and report to the work area inside the building. Appellant alleged that her emotional injury caused her considerable mental distress and resulted in the need for anti-anxiety medication and lost time from work. She stopped work on September 11, 1999 and has since not returned.

On October 12, 1999 the Office requested that appellant submit additional factual and medical evidence supportive of her claim. Specifically, the Office requested that appellant describe employment-related conditions or incidents which she believed contributed to her illness and provide a comprehensive medical report from her physician containing a diagnosis and medical rationale explaining how the diagnosed condition was caused by the implicated work factors. Appellant failed to submit additional evidence within the allotted 30 days.

By decision dated November 26, 1999, the Office denied the claim on the grounds that no fact of injury had been established, noting that appellant had failed to respond to the October 12, 1999 request for additional information.

Appellant requested an oral hearing before an Office representative in an undated letter postmarked January 5, 2000.

¹ 5 U.S.C. § 8101 *et seq.*

By decision dated January 31, 2000, the Office denied appellant's request for a hearing on the grounds that the request was not made within 30 days after issuance of the November 26, 1999 final decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty as alleged.

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 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.²

In this case, appellant attributed her emotional condition to actions by her supervisor, who ordered her to report to a work area inside the building. This action constitutes the administration of personnel matters by the employing establishment and Ms. Miller.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.³

In this case, appellant has alleged that the employing establishment and Ms. Miller acted unreasonably in the administration of supervisory functions. She, however, has submitted no evidence to substantiate her allegation that the action taken by the employing establishment was unreasonable or rose to the level of error or abuse in an administrative or personnel matter. Therefore, appellant has not established that this event constitutes a factor of employment.

As appellant has failed to substantiate a compensable factor of employment, she has failed to meet her burden of proof.⁴

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

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

³ *Martha L. Watson*, 46 ECAB 407 (1995).

⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁵ 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.⁶

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 the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of 1966 amendments to the Act which provided the right to a hearing,⁷ when the request is made after the 30-day period established for requesting a hearing,⁸ or when the request is for a second hearing on the same issue.⁹ The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.¹⁰

In this case, appellant’s hearing request, postmarked January 5, 2000, was made more than 30 days after the date of issuance of the Office’s November 26, 1999 decision. Thus, appellant was not entitled to a hearing as a matter of right.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office in its January 31, 2000 decision properly exercised its discretion by stating that it had considered appellant’s request and had denied it on the basis that the issue in this case could be equally well addressed by requesting reconsideration and submitting evidence not previously considered, which established that an injury was sustained as alleged.

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 judgement or actions taken which are contrary to both logic and probable deduction from established facts.¹¹

In this case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant’s hearing request that could be found to be an abuse of

⁵ 5 U.S.C. § 8124(b)(1).

⁶ *Frederick D. Richardson*, 45 ECAB 454 (1994).

⁷ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁹ *Johnny S. Henderson*, 34 ECAB 216 (1982).

¹⁰ *Sandra F. Powell*, 45 ECAB 877 (1994).

¹¹ *Daniel J. Perea*, 42 ECAB 214 (1990).

discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The January 31, 2000 and November 26, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 25, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member