

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA F. COLLINS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Monterey Park, CA

*Docket No. 99-849; Submitted on the Record;
Issued January 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's July 1, 1998 request for a hearing before an Office hearing representative; and (2) whether appellant sustained an emotional condition while in the performance of her duties.

In a decision dated January 28, 1998, the Office found that the evidence of record did not establish that appellant's alleged emotional condition arose out of the performance of her federal employment. The Office attached a statement of review rights notifying appellant that any request for a hearing must be made within 30 days after the date of the decision. On July 7, 1998 appellant sent a medical report to the Branch of Hearings and Review.

In a decision dated August 19, 1998, the Office denied appellant's request for a hearing on the grounds that it was untimely. The Office nonetheless considered the matter in relation to the issue involved but found that appellant could equally well resolve her case through the reconsideration process.

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

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

“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 section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”¹

¹ 5 U.S.C. § 8124(b)(1).

A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision.² The Office has discretion, however, to grant or deny a request that is made after this 30-day period.³ In such a case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.⁴

Because appellant made her July 7, 1998 request for a hearing more than 30 days after the Office's January 28, 1998 decision, she is not entitled to a hearing as a matter of right. The Office considered the matter and correctly advised appellant that she could equally well resolve her claim through the reconsideration process.⁵ The Board finds that the Office did not abuse its discretion in denying appellant's untimely request for a hearing.

On April 21, 1997 appellant, a revenue agent, filed a claim asserting that her chronic depression with anxiety was a result of her federal employment. Because her position involved continuous use of a computer and typewriter an average of six hours a day, she felt as though her hands were going to "collapse." She alleged that on June 23, 1996 her manager forced her to do all her calculations on the computer to save time. Her manager was aware of appellant's carpal tunnel syndrome. On July 23, 1997 her manager attempted to give her a typing lesson, instructing her to type with her wrists up. Appellant also implicated mocking from coworkers in June, July and August 1996. On August 20, 1996 her manager, rather than accommodating the disability, gave appellant an assignment that demanded more computer use.

With her claim appellant submitted a 17-page handwritten statement. She alleged harassment and frustration. She implicated her manager's criticism and overview of her work. Her manager criticized her for spending too much time on her cases although she was aware that appellant was diagnosed with carpal tunnel syndrome. Appellant stated that coworkers mocked her about her choice of deodorant and perfume, that they talked about her as though she were invisible, which caused her to lose concentration, experience butterflies in her stomach, and have diarrhea and migraines. Appellant became paranoid and depressed. Her disability forms would either not be completed or would come up missing. The manager denied a request to transfer. The manager allegedly advised coworkers not to talk with appellant because appellant caused trouble. When her doctor placed her on light duty, appellant was terrified to return to work because she claimed her manager had it in for her. Even when she was not at work, she alleged she was mentally there and lived the nightmare and took her frustrations out on perfect strangers. When the manager inquired about appellant's return-to-work date and when the manager's secretary told appellant that the branch chief would be contacting her about a personnel action, appellant had diarrhea and emotional distress. The manager threatened to charge appellant with being absent without leave even though appellant was on approved leave status.

² 20 C.F.R. § 10.131(a)(b).

³ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁴ *Rudolph Bermann*, 26 ECAB 354 (1975).

⁵ The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

Appellant contended that her manager was primarily responsible for the onset of her emotional distress. Whenever the manager harassed her about excessive time on cases, using the computer or using the typewriter, she would have depression, anxiety and diarrhea. She stated that her coworkers contributed to her emotional distress by harassing and mocking her. As a result, she had low self-esteem.

Appellant's manager responded in a statement in which she expressed concern about the accuracy of the allegations made and denied appellant's statements. The manager stated that, if appellant had disclosed that her injury was computer related, she never would have asked appellant to continue working on the computer. In summary, the manager found no basis of any of appellant's allegations against her coworkers. Further, she stated that appellant's accusations about her were also false.

The Office requested and received additional information from both appellant and the employing establishment.

In a decision dated January 28, 1998, the Office found that the evidence of record did not establish that appellant's alleged emotional condition arose out of the performance of her federal employment. Specifically, the Office found that it was not factually established that appellant failed to receive appropriate help. While it was established that the manager requested revisions, the evidence failed to establish that the requests were unreasonable. It was not factually established that the manager deliberately loaded appellant with work upon learning of her wrist condition, that she ignored appellant's medical condition or that she forced appellant to perform computer work with knowledge that appellant was diagnosed with carpal tunnel syndrome. There was no evidence that the manager scolded appellant, isolated her or behaved improperly. It was not established that the manager went through appellant's desk. It was not established as factual that the manager instructed appellant to wait for a workshop before proceeding on with her cases. It was not established that appellant was not properly instructed on how to charge training time. It was not established as factual that appellant was deprived of the necessary resources to perform her work. It was established that workshops were not scheduled around appellant's personal work schedule, but her reaction to administrative scheduling was not considered in the performance of duty. While the manager did instruct appellant on how to type, there was no evidence that she acted inappropriately. Appellant provided no evidence to support her allegation that coworkers harassed or mocked her. It was established that appellant could not transfer to another duty post, but as this was an administrative matter the issue was not considered a part of appellant's day-to-day duties. There was no evidence to establish the manager failed to accommodate appellant. It was not established that the employing establishment harassed appellant.

The Board finds that the evidence fails to establish that appellant sustained an emotional condition while in the performance of her duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to an employee's employment.⁶ An employee's emotional reaction to an

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁷ Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁸

The Office has well developed the factual evidence in this case and has given due consideration to each of the allegations made by appellant. The Office has also properly determined that most of these allegations are not established as factual. Appellant failed to support her allegations with probative and reliable evidence. Without a factual basis for these allegations, her perceptions alone are insufficient to establish an entitlement to compensation.

With respect to those allegations accepted as factual by the Office, appellant's emotional reaction thereto is not compensable. Reactions to administrative or personnel matters are generally not covered by workers' compensation and there is insufficient evidence in the record to require a finding by this Board of error or abuse by the manager in the exercise of supervisory discretion or the discharge of supervisory responsibilities.

The August 19 and January 28, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 18, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Margreate Lublin*, 44 ECAB 945 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).