

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLYN R. TROLL and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Burlington, IA

*Docket No. 01-896; Submitted on the Record;
Issued October 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition causally related to compensable work factors; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On May 4, 2000 appellant filed a traumatic injury claim alleging that his depression and stress were causally related to incidents on April 4, 2000. Appellant indicated that he had been placed on administrative leave pending an investigation of allegations of sexual harassment. Appellant asserted that the allegations were false.

In a decision dated August 21, 2000, the Office denied the claim, finding that no compensable factors had been established. By letter dated September 26, 2000, appellant requested a review of the written record. In a decision dated November 18, 2000, the Office's Branch of Hearings and Review determined that the request was untimely and appellant was not entitled to a review of the written record as a matter of right. Under its discretionary authority, the Branch considered the request and found that the issues could be equally well addressed by submitting new evidence with a request for reconsideration.

The Board finds that appellant has not established an emotional condition causally related to compensable work factors.

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

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

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

In this case, appellant indicated that he was placed on administrative leave pending an investigation of allegations of sexual harassment. It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.⁴ The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.⁵

The decision to place appellant on leave is an administrative matter that is not related to his regular or specially assigned duties. It is compensable only if there is probative evidence of error or abuse by the employing establishment. In addition, the investigation itself is an administrative function and error or abuse must be shown to render the actions of the employing establishment as compensable work factors.⁶ In determining whether the employing establishment erred or acted abusively, the Board has looked to whether the employing establishment acted reasonably.⁷

The evidence of record contains an investigative memorandum dated April 13, 2000 and accompanying witness statements and evidence that were gathered as part of the employing establishment investigation. The evidence establishes that a complaint was made that appellant had engaged in conduct in violation of the employing establishment's code of ethical conduct, and an investigation was conducted. There is no evidence in the investigative memorandum or the accompanying documents that supports a finding that the investigation itself was erroneous or abusive. Appellant has not submitted any probative evidence of error or abuse in the

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

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

⁴ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁵ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ See *Ruth S. Johnson*, 46 ECAB 237 (1994); *Richard J. Dube*, *supra* note 4.

⁷ See *Kathleen D. Walker*, *supra* note 5.

investigation, nor is there any evidence of record that the decision to place appellant on administrative leave pending the investigation constituted error or abuse. In the absence of such evidence, the Board finds that appellant has not substantiated a compensable work factor as contributing to an emotional condition. 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 review of the written record.

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 the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁹ Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁰ The regulations provide that a claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of the issuance of the decision, as determined by the postmark of the request.¹¹

The Office merit decision in this case was dated August 21, 2000. Appellant's request for a review of the written record is dated and postmarked September 26, 2000, which is more than 30 days after the merit decision. It is therefore untimely and appellant is not entitled to review of the written record as a matter of right.

Although appellant's request for a review of the written record was untimely, the Office has discretionary authority with respect to granting the request and the Office must exercise such discretion.¹² In this case, the Office advised appellant that the issue could be addressed through the reconsideration process and the submission of new 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.

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

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. § 10.615.

¹¹ 20 C.F.R. § 10.616(a).

¹² See *Cora L. Falcon*, 43 ECAB 915 (1992).

¹³ *Id.*

The decisions of the Office of Workers' Compensation Programs dated November 18 and August 21, 2000 are affirmed.

Dated, Washington, DC
October 29, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member