

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. KIENHOFER and U.S. POSTAL SERVICE,
POST OFFICE, Keyport, NJ

*Docket No. 02-882; Submitted on the Record;
Issued August 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

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 her request for an oral hearing before an Office hearing representative.

On March 24, 2001 appellant filed an occupational injury claim alleging that her stress was causally related to incidents with two coworkers "when she does dispatch and has to sign for the registered bags." Appellant further advised that she filed an Equal Employment Opportunity (EEO) Commission claim in this matter. A copy of the complaint was provided.

In a decision dated September 22, 2001, the Office denied the claim, finding that no compensable factors had been established. The Office had found that on March 13, 16 and 23, 2001 appellant's coworkers refused to give her a bag until they witnessed her sign the "registered book," but found that this was a noncompensable factor of employment as the record was devoid of any evidence that the coworker's actions were unreasonable. By letter postmarked December 7, 2001, appellant requested an oral hearing before an Office representative. In a decision dated January 28, 2002, the Office's Branch of Hearings and Review determined that the request was untimely and appellant was not entitled to an oral hearing as a matter of right. Under its discretionary authority, the Branch of Hearings and Review 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 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 this case, appellant indicated and the Office found, that the incident of March 13, 16 and 23, 2001 wherein appellant's coworkers refused to give her a bag until they witnessed her sign the "registered book" had occurred. Appellant alleged this was 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 Office advised appellant, in its letter dated May 7, 2001, that her reaction to such an administrative matter was not compensable unless there was evidence of error or abuse by the employing establishment. Reactions to an administrative matter 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

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 *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.

the employing establishment erred or acted abusively, the Board has looked to whether the employing establishment acted reasonably.⁷

The evidence of record contains the supervisor's statement, appellant's statements, a copy of an EEO complaint regarding the above-mentioned incidents and information from the employing establishment regarding appellant's employment. There is no final decision rendered from the EEO complaint. Although, appellant advised that her coworkers never previously insisted on watching her sign the "registered book," this allegation absent supportive evidence is not enough to show that the coworker's actions were unreasonable or abusive. The filing of an EEO complaint is also insufficient to establish that the coworkers' actions were unreasonable or abusive. There is no evidence in the record to support that the coworker's actions were in error or abusive. Appellant has not submitted any probative evidence of error or abuse nor is there any evidence of record that the coworker's actions on March 13, 16 and 23, 2001 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 she 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 an oral hearing before an Office hearing representative.

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 hearing 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 September 22, 2001. Appellant's request for an oral hearing is postmarked December 7, 2001, which is more than 30 days after the merit decision. It is, therefore, untimely and she is not entitled to an oral hearing as a matter of right.

Although appellant's request for an oral hearing 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

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

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).

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.

The decisions of the Office of Workers' Compensation Programs dated January 28, 2002 and September 22, 2001 are affirmed.

Dated, Washington, DC
August 21, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

¹³ *Id.*