

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORANETTE L. STEPHERSON and U.S. POSTAL SERVICE,
POST OFFICE, Oak Creek, WI

*Docket No. 02-493; Submitted on the Record;
Issued July 10, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she developed an emotional condition due to incidents on May 8, 2000; and (2) whether the Branch of Hearings and Review abused its discretion by denying appellant's request for a second oral hearing.

Appellant, a 27-year-old clerk, filed a notice of traumatic injury on June 5, 2000 alleging that on May 8, 2000 she developed mental and emotional stress, "Due to stressful situation with management not granting a requested hardship." The Office of Workers' Compensation Programs denied appellant's claim by decision dated November 28, 2000. Appellant requested an oral hearing and by decision dated August 21, 2001 and finalized August 23, 2001, the hearing representative affirmed the Office's decision. Appellant requested further appeal processes on October 10, 2001. By decision dated November 14, 2001, the Branch of Hearings and Review denied appellant's request for a second hearing.

The Board finds that appellant failed to meet her burden of proof in establishing an emotional condition.

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.¹

In this case, appellant attributed her emotional condition to the decision of her supervisor, Chris Baltz, verbally denying her request to change her tour of duty due to hardship. This

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

occurred on May 8, 2000 and appellant stopped work on that date. Appellant alleged that Mr. Baltz denied her request for personal reasons. On the reverse of appellant's claim form, Mr. Baltz stated that he denied appellant's request as she failed to submit requested documentation. Appellant stated that a second line supervisor, Catherine Matthews, had verbally indicated that appellant would be allowed to change shifts due to hardship. The employing establishment responded and stated that appellant's schedule was handled within normal administrative procedures.

Appellant submitted a grievance settlement dated June 14, 2000 granting appellant 30 days on the requested tour. However, this grievance settlement was reached without prejudice to either party. On July 15, 2000 appellant requested a temporary schedule change from her regular tour of 3:00 p.m. to 11:30 p.m. to 5:00 a.m. to 3:30 p.m. Appellant alleged that Ms. Matthews violated the terms of the grievance settlement by forcing appellant to work on Tour 3 on July 25, 2000. The record indicates that appellant used leave for 40 hours from June 17 through June 23, 2000. On July 25, 2000 appellant requested to leave early. The leave slip indicates that appellant was scheduled to report at 1500 hours or 3:00 and requested leave from 22:50 to 23:50 or from 11:30 p.m. to 12:30 p.m. Although this indicates that appellant worked her regular tour on July 25, 2000, the Board notes that the 30-day period of the grievance had expired on July 14, 2000.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation 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.² In this case, appellant attributed her emotional condition to the denial of a requested change of shift.³ She has not submitted any evidence establishing error or abuse on the part of the employing establishment in this case. Although appellant submitted a grievance settlement resolved in her favor, the Board has held that the mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.⁴ She also alleged discrimination because another employee was granted a hardship tour change for the same reasons as appellant. Without evidence of error or abuse, the Board finds that appellant has failed to establish this compensation factor of employment.

As appellant has failed to substantiate a compensable factor of employment, she failed to meet her burden of proof and the Office properly denied her claim.

The Board further finds that the Branch of Hearings and Review properly denied appellant's request for a second oral hearing.

Section 8124(b) of the Act,⁵ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not

² *Martha L. Watson*, 46 ECAB 407 (1995).

³ *Elizabeth Pinero*, 46 ECAB 123, 130 (1994).

⁴ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

⁵ 5 U.S.C. §§ 8101-8193.

satisfied with 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.”⁶

In this case, appellant requested and received an oral hearing decision on August 23, 2001. Following this decision, on October 10, 2001 she requested additional appeal rights from the Branch of Hearings and Review. In its November 14, 2001 decision, the Branch of Hearings and Review properly informed appellant that she was not entitled to a second hearing on the same issue as a matter of right.⁷

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was evidentiary and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant’s request for a second hearing and properly exercised its discretion in determining to deny appellant’s request for a hearing as she had other review options available.

The November 14 and August 23, 2001 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 10, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ 5 U.S.C. § 8124(b)(1).

⁷ *Frederick Richardson*, 45 ECAB 454, 466 (1994).