

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHAUN DEFREITAS and U.S. POSTAL SERVICE,
POST OFFICE, Freeport, NY

Docket No. 02-287; Submitted on the Record;
Issued September 9, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issues are: (1) whether appellant has established an emotional condition causally related to compensable work factors; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On November 13, 2000 appellant filed a traumatic injury claim alleging that the "hazardous" actions of management on November 2, 2000, caused him to suffer depression, anxiety and fear. He asserted with the claim that on November 2, 2000 management acted inappropriate and intentionally delayed his request for medical treatment for pain due to a preexisting back injury.¹ Appellant did not stop work following the November 2, 2000 event.

In a letter dated December 14, 2000, the Office requested additional information from appellant in order to make a determination in his case. Appellant submitted both factual and medical documentation in response to the Office request.

In a decision dated August 15, 2001, the Office denied appellant's claim on the grounds that he had not identified any compensable factors of employment. By letter dated September 14, 2001, postmarked on September 17, 2001 appellant requested an oral hearing. In a decision dated October 15, 2001, 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 considered the request and found that the issue 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.

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

¹ Appellant sustained a previous back injury on November 4, 1998 while lifting packages at work. Claim No. 020750492.

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.²

The record contains a narrative statement from appellant dated November 16, 2000 in which appellant detailed management's alleged response to his November 2, 2000 request for medical assistance while on duty. Appellant alleged that he suffered back pain and requested medical assistance, however, his supervisor asked him whether he wanted to case mail or write priority confirmations. He stated that his supervisor informed him that he would take him and another employee with an injury to get medical care, however, he could not leave until relieved by management. Appellant alleged that, when the postmaster arrived and was advised of appellant's situation, she further delayed medical assistance. The postmaster allegedly stated that, if appellant could not be a carrier he should just leave the position. Appellant alleged that he replied that he just wanted to see a doctor and should not have to wait two hours. He then asserted that the postmaster called the shop steward in and informed appellant that there was no one in the building who could take him. Appellant further stated that he then turned to his supervisor who was also in the office and asked if he would take him and his supervisor purportedly replied "no." The postmaster then allegedly stated that appellant could ride with the other injured employee, however, appellant indicated that he felt unsafe with the employee driving with a foot injury. He alleged that the postmaster then offered to take him however appellant refused and stated that "he did n[o]t want to deal with the harassment on top of being in pain." Appellant alleged that he requested an ambulance however the postmaster responded that the employing establishment would not pay for it. He then alleged that the postmaster indicated that she would take both appellant and the other injured employee and appellant then requested that someone else accompany them. Appellant asserted that the shop steward then told the other injured employee "to listen and make sure the postmaster did n[o]t harass [appellant] on the way to the doctor." He stated that, when they arrived to the medical facility, x-rays were taken and appellant was referred to another physician in Oceanside. Appellant indicated that, once they arrived in Oceanside, the postmaster asked the secretary how long they would be and then asked appellant if he had someone to pick him up. He asserted that he replied no and the postmaster stated that she would call him a taxi. Appellant indicated that he told the postmaster that he felt that would be inappropriate for her to leave him given his condition. He alleged that the postmaster then left the doctor's office with the other injured employee and took his paperwork. Appellant alleged that the physician's secretary stated that the postmaster had not given her any paperwork or a chance to tell her that they could not assist appellant because his pain and condition resulted from a previous injury. He noted that the postmaster was then called who in turn, called appellant a taxi and directed the taxi driver to take appellant home. Appellant asserted that he never received the medical treatment needed and that the postmaster's actions "made [his] condition worse and unsafe under her management."

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

In a statement dated December 26, 2000, appellant clarified that he sustained a job-related back injury on November 4, 1998 and that he had since been harassed by management, which caused depression, anxiety, pain and fear along with lower back problems due to the latest November 2, 2000 event. Appellant reiterated the facts alleged in his first statement, also noting that he was unable to receive medical treatment in Oceanside due to the actions of management. He further asserted that, while in the taxi on the way home, he vomited and later sought emergency care. Appellant submitted a statement from the taxi driver corroborating that appellant was ill while in the taxi and that the employing establishment paid the fare.

In this case, appellant indicated that management delayed him medical care, which worsened his back problems and caused depression, anxiety and fear. Management's response to appellant's request for medical assistance is an administrative or personnel matter. 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.³ 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.

The administrative matter identified here is compensable only if there is probative evidence of error or abuse by the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has looked to whether the employing establishment acted reasonably.⁴

The evidence of record contains a controversion letter from the employing establishment, with accompanying witness statements and medical evidence, which challenge appellant's allegation that he was delayed and denied medical care because of inappropriate actions of the employing establishment. The employing establishment submitted a statement dated January 30, 2001 from Crisetta Hatwood, the postmaster who indicated that appellant had been on the injured list for over two years and had always been accommodated for his conditions. She asserted that on November 2, 2000 appellant informed his supervisor of a new back injury and that she requested that appellant complete a CA-1 form and informed him that he would be taken for medical attention. She then stated that appellant's supervisor offered to take appellant and another injured employee when the other employee finished his route and appellant became indignant and stated that he was in pain "now" and was calling an ambulance. Ms. Hatwood asserted that she offered to take appellant to the medical facility, however, appellant refused until Ms. Hatwood requested that the shop steward accompany them. Ms. Hatwood indicated that she and the shop steward took both employees to the first facility, however, appellant was then referred to the orthopedic center in Oceanside. Ms. Hatwood indicated that, while appellant waited to be seen in Oceanside, she filled out paperwork. She explained to appellant and the facility staff that she had to take her other employee back to the employing establishment. Ms. Hatwood asserted that she requested the staff to call her after a physician saw appellant, so that he could be picked up and she indicated that this arrangement was acceptable to appellant. Ms. Hatwood asserted that when appellant was finished she called a taxi to pick him up, with prior approval from the injury compensation office. Ms. Hatwood further noted that she was aware that appellant's mother had inquired about her son's condition, therefore she called appellant's mother and informed her that she was sending appellant home by taxi.

³ *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

⁴ *See Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

The employing establishment also submitted statements from the other employee injured who also sought medical care on November 2, 2000 and a second witness. Both witnesses asserted that the postmaster offered to take appellant to a physician after his medical complaints on November 2, 2000, but that appellant did not want to go with her alone, and further that appellant was not mistreated in anyway.

The evidence of record does not establish error or abuse on the part of the employing establishment. The record indicates that representatives of the employing establishment addressed appellant's pain complaints and that he was provided the opportunity for medical care within a reasonable time period. The evidence supports that there was a brief delay in providing medical assistance by the employing establishment while transportation was determined for appellant and the other injured employee. When the postmaster offered to take appellant, the record reflects that he denied assistance until the shop steward was asked to accompany them. Appellant did not provide witness statements to corroborate his claim that the employing establishment acted inappropriately. Witnesses of the incident indicate that appellant was indeed offered medical care and was not mistreated in any way.

Regarding the claim that appellant was unable to receive care due to actions of the employing establishment, appellant has further failed to establish this allegation. The evidence indicates that appellant was denied medical care at the Oceanside medical facility because the pain appellant suffered originated from a preexisting injury.

Appellant also made general allegations that the employing establishment acted inappropriately on November 2, 2000 in calling him a taxi from the medical facility. The postmaster asserted that she sought approval from the injury compensation office before she called appellant a taxi and that appellant's mother was notified of appellant's transportation home. Appellant has submitted no evidence indicating error or abuse in that regard.

Appellant further asserted that the employing establishment harassed him since the previous back injury in 1998, however, there is no factual support for his allegation. Mere perceptions of harassment alone are not sufficient to establish compensability under the Act.⁵ Because the record is devoid of probative evidence of error or abuse by the employing establishment and further because appellant has failed to corroborate his allegations of harassment with factual support in the record, he has failed to allege a compensable factor of employment. Therefore, the Office properly determined that his emotional condition did not arise in the performance of duty.⁶

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

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁷ As section 8124(b)(1) is unequivocal in setting forth the time

⁵ *Anna C. Leanza*, 48 ECAB 115 (1996).

⁶ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *See* 5 U.S.C. § 8124(b).

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.⁸ As appellant's September 17, 2001 request for a hearing was dated more than 30 days after the Office's August 15, 2001 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for a hearing and determined that the issue of performance of duty could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated October 15 and August 15, 2001 are affirmed.

Dated, Washington, DC
September 9, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

⁸ See 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).