

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS J. CRUZ and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

*Docket No. 02-631; Submitted on the Record;
Issued September 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition due to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing pursuant to section 8124 of the Federal Employees' Compensation Act.

On April 11, 2001 appellant, then a 35-year-old window distribution clerk, filed a claim alleging that she suffered a nervous breakdown, anxiety, bruises on both legs and a stiff neck as a result of an April 4, 2001 meeting with the postmaster to discuss her light-duty accommodation. In a statement dated April 11, 2001, appellant alleged that she suffered a nervous breakdown after she felt harassed and persecuted by her supervisor and postmaster when she was called into their office and questioned about her restricted duty status. Appellant related that the discussion got to a point where she was so emotionally affected that she fell to the floor on her back. She stated that she could not recall what happened during that stage as she lost consciousness. Medical evidence was submitted.

In an April 25, 2001 letter, the employing establishment controverted the claim on the basis that appellant reacted to her employer's request in a total irrational manner and caused injury to herself when she started to throw items from her supervisor's desk and had to be held down by her shop steward and other employees. Statements from Dennis Algarin, Supervisor, Mirta Laboy, Postmaster of Loiza Post Office and Israel Ortiz, postmaster of Fajardo Post Office were submitted in support of the employing establishment's controversion of the claim.

In a May 21, 2000 letter, the Office requested additional information from appellant.¹ The Office specifically advised appellant that if she thought her case was a direct result of administrative error or abuse, she needed to submit evidence indicative of such.

¹ The Office noted that appellant had filed an April 17, 2001 claim for a shoulder injury (claim number 022011881) and inquired whether there was any relationship between the two claims.

Appellant submitted an undated statement explaining that she was experiencing a problem with her right shoulder and had asked her supervisor, Mr. Algarin, for one week of light duty, which was granted.² She stated that on April 3, 2001, her union representative informed her supervisor, within her presence, to consider giving her all available light-duty work. Appellant indicated that she was also asked to have her physician fill out Form CA-17. She indicated that the next day, April 4, 2001, she informed her supervisor and the postmaster that her physician was unable to fill out the Form CA-17 until Friday or the following week. Appellant's supervisor told her she could not perform her regular duty or duties normally done during a regular operation because of her physical condition. A few hours later, she related that her supervisor approached her to speak about the Form CA-17 and her light-duty certificate. Appellant related that she felt harassed, persecuted and distress because of her supervisor's insistent approaches. Later in the day, her supervisor called her and Mr. Albo, the union shop steward, to the postmaster's office to discuss the matter with Postmaster Ortiz. Appellant related that the discussion got to a point where she felt anxious, nervous and unable to speak. Additional medical evidence was submitted along with witness statements attesting to the fact they witnessed appellant's nervous breakdown.

In an April 4, 2001 statement, Carlos N. Albo, union shop steward, advised that in the April 4, 2001 meeting appellant was told that there was not enough light-duty work and that her starting schedule would be changed from 6:00 a.m. to 8:00 a.m. Mr. Albo advised that he understood this situation affected appellant due to another previous grievance. He indicated that the medical certificate appellant had brought in needed to be more specific in the instructions pertaining to working conditions. Mr. Albo questioned why management did not call appellant's doctor instead of questioning her. He filed an April 12, 2001 Step 1 grievance outline worksheet contending that management should have called appellant's doctor as opposed to harassing appellant, which the postmaster denied.

By decision dated August 24, 2001, the Office denied appellant's claim for compensation on the grounds that the evidence failed to establish that she sustained an emotional condition in the performance of her duty. The Office found that the evidence did not establish that appellant was harassed by the employing establishment during the April 4, 2001 meeting. The Office further found that there was no evidence of error or abuse on the part of the employing establishment in requesting additional medical documentation for the continuation of light duty.

By letter dated September 25, 2001 and postmarked September 27, 2001, appellant requested an oral hearing before the Office's Branch of Hearings and Review.

In a decision dated October 27, 2001, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing as untimely. It further determined that appellant's request could equally well be addressed by requesting reconsideration from the Office and submitting evidence not previously considered which establishes a work-related condition.

² Appellant stated that although she had filed a shoulder claim on April 17, 2001, claim number 022011881, which caused her to ask to light duty, the current claim, was filed due to the incident of April 4, 2001.

On appeal to the Board, appellant argued that her September 27, 2001 request for an oral hearing was timely as the Office had issued its August 24, 2001 decision on August 27, 2001. A copy of the envelope showing such postmark was attached.

Initially, the Board finds that the Office did not abuse its discretion under section 8124(b)(1) in denying appellant's request for an oral hearing as untimely.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant ... 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."³ Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.⁴ Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulation.⁵

Section 10.616(a) of the Office's regulations⁶ provides in pertinent part that the hearing request must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carriers marking) for which a hearing is sought.⁷

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁸ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act, which provided the right to a hearing,⁹ when the request is made after the 30-day period for requesting a hearing¹⁰ and when the request is for a second hearing on the same issue.¹¹

As previously noted, appellant's request for a hearing of the August 24, 2001 decision was postmarked September 27, 2001. She argues that her September 27, 2001 request was

³ 5 U.S.C. § 8124(b)(1); *see William N. Downer*, 52 ECAB ____ (Docket No. 99-606, issued January 12, 2001).

⁴ 20 C.F.R. § 10.615.

⁵ *Samuel R. Johnson*, 51 ECAB ____ (Docket No. 99-1227, issued August 1, 2000).

⁶ 20 C.F.R. § 10.616.

⁷ *Samuel R. Johnson*, *supra* note 5.

⁸ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁹ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁰ *Delmont L. Thompson*, 51 ECAB ____ (Docket No. 97-988, issued November 1, 1999); *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹¹ *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

timely as the August 24, 2001 decision was postmarked August 27, 2001. Although the evidence of record reflects that the August 24, 2001 decision was issued on August 27, 2001, the Board finds that appellant's hearing request is still not timely. The 30-day time period for determining the timeliness of appellant's hearing request commences on the first day following the issuance of the Office's decision.¹² As the Office's decision was issued on August 27, 2001, appellant had from August 28 until September 26, 2001 in which to file her appeal. Since appellant filed her hearing request on September 27, 2001, it was untimely as it fell on the 31st day after the issuance of the Office's decision. Accordingly, appellant was not entitled to a hearing as a matter of right.¹³

Even when the hearing request is not timely, the Office has discretion to grant the hearing request, and must exercise that discretion.¹⁴ In the present case, the Office determined that the issue in the case was factual and could be resolved through the reconsideration process by submitting further appropriate evidence. The Board finds that the Office did not abuse its discretion under the circumstances of this case.

The Board further finds that appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

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 to 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 come within the coverage of the Act.¹⁵

Verbal altercations and difficult relationship with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment.¹⁶ Verbal altercations may constitute harassment, but for harassment to give rise to a compensable

¹² See *Donna A. Christley*, 41 ECAB 90, 91 (1989).

¹³ Section 10.31(a) of the implementing federal regulations, 20 C.F.R. § 10.131(a), provides that a hearing request is deemed "made" as of the date of the postmark of the request; see *Lee F. Barrett*, 40 ECAB 892 (1989). Appellant's hearing request was postmarked September 27, 2001.

¹⁴ See *Ella M. Garner*, 36 ECAB 238 (1984).

¹⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁶ *Christopher Jolicoeur*, 49 ECAB 553, 556 (1998).

disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.¹⁷

An employee's complaints concerning the manner in which a supervisor performs his duties or exercises his supervisory discretion falls, as a rule, outside the scope of coverage provided by the Act.¹⁸ This principle recognizes that supervisors or managers in general must be allowed to perform their duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.¹⁹

In the present case, appellant alleged that she sustained an emotional condition during a meeting held on April 4, 2001 to discuss the requirements necessary to continue light duty. Present at the meeting were appellant, Mr. Albo, the union shop steward, Mr. Ortiz, postmaster of Fajardo Post Office, Mr. Laboy, postmaster of Loiza Post Office and Mr. Algarin, supervisor. The statements of the parties present at the meeting reveal that appellant was told she could not continue working light duty without a written request for light duty and a doctor's report stating that such light duty was medically justified. The record supports that appellant began screaming, yelling, throwing books and papers she had in her hand and began throwing materials off of her supervisor's desk.

The record is devoid of any showing that appellant was harassed by her supervisor before and during the meeting of April 4, 2001. The witness statements reveal that appellant's supervisor spoke to appellant in a calm manner and both the shop steward and appellant's supervisor tried to calm appellant down following her emotional outburst. Moreover, the shop steward felt that the only harassment appellant suffered was by having management request additional medical documentation from appellant as opposed to going directly to her physician. Additionally, there is no evidence of record which establishes that appellant's supervisor erred or acted abusively in carrying out his administrative functions. The Board, therefore, concludes that appellant's emotional condition in this regard was self-generated as it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.

As appellant had alleged no other compensable factors of employment as causative of her emotional condition, she has failed to meet her burden of proof to establish that she sustained an emotional injury in the performance of duty. Therefore, the medical evidence relating appellant's anxiety and depressive condition need not be addressed.²⁰

¹⁷ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁸ *Christopher Jolicoeur*, *supra* note 16 at 557.

¹⁹ *See Alfred Arts*, 45 ECAB 530 (1994).

²⁰ *See Gregory J. Meisenburg*, 44 ECAB 527 (1993); *Norma L. Blank*, 43 ECAB 384 (1992).

The decisions of the Office of Workers' Compensation dated October 25 and August 24, 2001 are affirmed.²¹

Dated, Washington, DC
September 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

²¹ The record contains a March 13, 2002 decision, which the Office issued after appellant filed her appeal with the Board. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case and those Office decisions that change the status of the decision on appeal are null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). The March 13, 2002 decision affirming its previous denial of appellant's request for an oral hearing is, therefore, null and void.