

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY S. LANDREE and U.S. POSTAL SERVICE,
POST OFFICE, Erie, PA

*Docket No. 03-263; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On October 31, 2001 appellant, a 34-year-old automation clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she suffered from an employment-related stress condition. Appellant alleged that the employing establishment's mishandling of her various leave requests under the Family and Medical Leave Act exacerbated her preexisting bipolar disorder. Appellant alleged that she was "being harassed by the Family and Medical Leave Act coordinator regarding [her] incurable mental disorder." She further stated that the Family and Medical Leave Act coordinator wanted her doctor to answer questions that "only God can answer." Appellant identified October 31, 2001 as the date she first became aware of her employment-related condition and she ceased working on December 28, 2001.

The Office denied appellant's claim by decision dated August 2, 2002. The denial was based upon appellant's failure to establish that her claimed condition arose in the performance of duty.

By letter postmarked September 5, 2002, appellant requested an oral hearing with the Branch of Hearings and Review. In a decision dated October 15, 2002, the Office found that appellant did not submit her request for an oral hearing within 30 days of the Office's August 2, 2002 decision, and therefore, she was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Board finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview 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 deemed 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 hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.³

The employment incidents that allegedly contributed to appellant's claimed emotional condition involved administrative and personnel matters. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Federal Employees' Compensation Act.⁴ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁵

Although the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁶ Appellant identified instances on September 12, October 31 and December 14, 2001 when the employing establishment either requested additional medical documentation or denied appellant's requested leave for insufficient documentation. She alleged that the requests for additional medical documentation and the denial of coverage were in violation of the Family and Medical Leave Act. Appellant further alleged that in certain instances the employing establishment did not allow adequate time to submit the requested medical information.

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

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

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Id.*

⁵ *Id.*

⁶ *Dinna M. Ramirez*, 48 ECAB 308, 313 (1997).

In response to appellant's allegations, the employing establishment explained that for several years appellant had requested and been granted leave under the Family and Medical Leave Act for a bipolar disorder. The employing establishment further explained that in October 2001 it instituted an attendance control office and all employees who were unable to report for duty were required to contact this central office and provide information concerning the reason for their absence and the expected duration. The attendance control office had a designated Family and Medical Leave Act coordinator who was trained on Family and Medical Leave Act law and responsible for determining employee eligibility for such claims. Appellant reportedly had numerous conversations with the Family and Medical Leave Act coordinator. The employing agency explained that its Family and Medical Leave Act coordinator was not responsible for making judgments as to whether appellant was ill or not, but only whether the required information had been properly submitted. Appellant reportedly failed to submit the required documentation and, in those instances, the Family and Medical Leave Act coordinator requested additional information. The employing establishment denied that its Family and Medical Leave Act coordinator was intentionally harassing appellant. Additionally, the employing establishment provided examples of appellant's medical documentation that it considered to be insufficient for purposes of determining appellant's eligibility under the Family and Medical Leave Act. The employing establishment also provided copies of correspondence sent to appellant requesting additional medical documentation and notes regarding conversations between appellant and the Family and Medical Leave Act coordinator.

While appellant may have perceived the Family and Medical Leave Act coordinator's efforts to obtain the required medical documentation as harassment, there is nothing in the record to suggest that the employing establishment acted inappropriately in attempting to carry out its responsibilities with respect to documenting appellant's claimed absences due to medical necessity. The fact that the process for obtaining approved leave may have become more cumbersome for appellant after October 2001, does not demonstrate that the employing establishment either erred or acted abusively in carrying out its administrative responsibilities. Moreover, contrary to appellant's allegation, the record does not establish that the employing establishment's actions were contrary to applicable laws and regulations. Thus, appellant has failed to establish that the employing establishment either erred or acted abusively in its handling of her Family and Medical Leave Act requests. Appellant also failed to substantiate her general allegation of harassment.⁷

Inasmuch as appellant failed to substantiate or implicate a compensable employment factor as a cause of her claimed emotional condition, the Office properly denied appellant's claim for compensation.

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

⁷ For harassment to give rise to a compensable disability there must be evidence that harassment did, in fact, occur. A claimant's mere perception of harassment is not compensable. *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996). The allegations of harassment must be substantiated by reliable and probative evidence. *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁸ However, the Office has discretion to grant or deny a request that was made after this 30-day period.⁹ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁰

Appellant's request for an oral hearing was postmarked September 5, 2002, which is more than 30 days after the Office's August 2, 2002 decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review, and correctly advised appellant that the issue of whether she sustained an injury in the performance of duty could equally well be addressed by requesting reconsideration.¹¹ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

The decisions of the Office of Workers' Compensation Programs dated October 15 and August 2, 2002 are hereby affirmed.

Dated, Washington, DC
February 20, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ 20 C.F.R. § 10.616(a) (1999).

⁹ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁰ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹¹ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).