U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA L. DOYLE and U.S. POSTAL SERVICE,
POST OFFICE, South Plainfield, NJ

Docket No. 03-1270; Submitted on the Record;
Issued July 22, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant has 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 a review of the written record.

On October 10, 2002 appellant, then a 59-year-old letter carrier, filed a traumatic injury claim alleging that she experienced stress when her supervisor, Michelle Cooper-Wilson, told her that she must perform the same job as she did on the day of her route count. Appellant stated that her supervisor came everyday to check how much work she had done. Appellant stopped work on October 10, 2002 and she has not returned. On the claim form, an employing establishment supervisor stated that, when appellant was instructed to demonstrate her ability to perform, she created a scene on the workroom floor. Appellant stated that "I ain't gonna work like this."

In an October 24, 2002 statement, Mrs. Cooper-Wilson provided that on October 10, 2002 she commended appellant for performing an excellent job during her mail count on October 8, 2002. She stated that she told appellant that the postmaster would expect the same caliber of work from her everyday. Mrs. Cooper-Wilson left appellant's work area and returned 40 minutes later to see if appellant was working as proficiently as she had on October 8, 2002. She stated that appellant had taken 40 minutes to put up one and one-half flats while she had previously thrown a foot of flats every 15 minutes on October 8, 2002. Appellant asked her if she was going to watch her everyday and Mrs. Cooper-Wilson responded that she was expected to perform the same way that she did when she was counted. She related that five minutes later appellant stated loudly across the room that her stomach was hurting and that she was going home. Mrs. Cooper-Wilson told appellant to bring back medical documentation. Appellant became loud and abusive saying that she had 17 years of service and that she did not have to take this. She stated that appellant was causing a disturbance on the workroom floor and asked appellant to leave the building. Appellant went to the break area where she talked to her coworker, Kelly Pompey, who told Mrs. Cooper-Wilson that appellant wanted an ambulance. Mrs. Cooper-Wilson asked appellant if she wanted an ambulance and appellant responded yes.

She called an ambulance and appellant was taken to the hospital and released that day. Appellant returned to the employing establishment with a note from her physician indicating that she should be off work from October 11 to 12, 2002.

Appellant submitted a prescription form and disability certificate indicating that she was disabled for work.

By letter dated November 13, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit additional factual and medical evidence supportive of her claim. Appellant submitted a complaint filed against the employing establishment for discrimination based on age and correspondence with the employing establishment regarding precomplaint counseling and mediation. She also submitted a statement indicating that she did not take a lunch break or use the bathroom because she did not want to use the time and this was causing her stress. Appellant stated that she was not working due to stress.

By decision dated December 18, 2002, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In an undated letter that was postmarked January 18, 2003, appellant requested a review of the written record accompanied by a January 14, 2003 report from Dr. Alexander Iofin, a Board-certified psychiatrist, indicating that she suffered from an emotional condition.

In a March 13, 2003 decision, the Office denied appellant's request for a review of the written record as untimely filed. The Office further found that the issue in the case could equally well be addressed by requesting reconsideration from the district Office and by submitting evidence not previously considered which established that appellant sustained a medical condition caused by compensable factors of her employment as alleged.

The Board finds that appellant has failed to establish 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 the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[1]

Perceptions and feelings alone are not compensable. 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 his federal

[1] *Lillian Cutler*, 28 ECAB 125 (1976).

employment.[2] 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.[3]

Appellant has alleged that she was required to perform the same amount of work that she performed on the day that her route was counted by her supervisor, Mrs. Cooper-Wilson.

Appellant has also alleged that Mrs. Cooper-Wilson monitored her work performance everyday. An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act.[4] This principle recognizes that a supervisor or manager, 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 compensable absent evidence of error or abuse.[5] The record does not contain any evidence of error or abuse by Mrs. Cooper-Wilson in handling the above matters.

Mrs. Cooper-Wilson explained that appellant was expected to perform at the same level as her performance on October 8, 2002 because she did an excellent job. The record does not contain any evidence establishing that appellant could not perform at the expected level or that Mrs. Cooper-Wilson was unreasonable in monitoring appellant's work. Having considered Mrs. Cooper-Wilson's statement, the Board finds no evidence of error or abuse in expecting appellant to work at a particular performance level and in monitoring her work. Appellant has not submitted any evidence of error or abuse by Mrs. Cooper-Wilson in handling the above matters. Thus, she has failed to establish a compensable factor of employment under the Act.

As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment under the Act, the medical evidence of record need not be addressed.[6]

The Board further finds that the Office properly denied appellant's request for a review of the written record.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office hearing representative, or review of the written record, provides in pertinent part: "Before review under section 8128(a) of this title, 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

[2] *Pamela R. Rice*, 38 ECAB 838 (1987).

[3] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[4] *Christophe Jolicoeur*, 49 ECAB 553 (1998).

[5] *Id.*

[6] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

issuance of the decision, to a hearing on his claim, or a review of the written record, before a representative of the Secretary."[7] 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.[8] Thus, a claimant has a choice of requesting an oral argument or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulations.

Section 10.616(a) of the Office's regulations[9] provides in pertinent part that "the hearing request must be sent within 30 days as determined by postmark or other carrier's date of marking of the date of the decision for which a hearing is sought."

The Board has held that the Office in its broad discretionary authority in the administration of the Act, has the power to hold hearings or a review of the written record, in certain circumstances where no legal provision was made for such hearings or review and that the Office must exercise this discretionary authority in deciding whether to grant a hearing or review.[10] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request or a review of the written record 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, or a review of the written record[11] when the request is made after the 30-day period for requesting a hearing or review.[12] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[13]

The 30-day time period for determining the timeliness of appellant's written review request commences on the first day following the issuance of the Office's decision.[14] In this case, the 30-day period for filing the request commenced December 19, 2002, the day after the issuance of the December 18, 2002 decision, and appellant had 30 days from December 19, 2002 through January 17, 2003 to file her request for a written review. The date of appellant's letter requesting a written review of the record is not in the record. However, the postmark of appellant's letter is dated January 18, 2003 and therefore is untimely. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she sustained a medical condition causally related to compensable factors of her

[7] 5 U.S.C. § 8124(b)(1).

[8] 20 C.F.R. § 10.615 (1999).

[9] 20 C.F.R. § 10.616(a) (1999).

[10] *Samuel R. Johnson*, 51 ECAB 612 (2000).

[11] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[12] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[13] *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

[14] *See Donna A. Christley*, 41 ECAB 90, 91 (1989).

employment could equally well be addressed by requesting reconsideration.[15] Accordingly, the Office properly exercised its discretion in denying appellant's untimely request for a review of the written record.

The March 13, 2003 and December 18, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 22, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[15] 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).