

**United States Department of Labor
Employees' Compensation Appeals Board**

ELIZABETH C. TARRANT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Vincentown, NJ, Employer**

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**Docket No. 04-746
Issued: July 15, 2004**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 27, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 25, 2003 denying her request for a hearing. Pursuant to 20 C.F.R. §§ 10.501.2(c) and 501.3, the Board has jurisdiction over the September 25, 2003 decision. The Board also has jurisdiction over a May 16, 2003 Office decision denying appellant's claim for an emotional condition.

ISSUES

The issues are: (1) whether the Office properly denied appellant's request for a hearing on the grounds that she had already obtained review of her claim under section 8128 of the Federal Employees Compensation Act; and (2) whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to factors of her employment.

FACTUAL HISTORY

On October 6, 2001 appellant, then a 44-year-old customer service manager, filed an occupational disease claim alleging that she sustained anxiety and depression as a result of overtime work and supervisory responsibilities.

In a letter dated August 18, 2001, appellant alleged that she was solely responsible for the opening of a new post office in February 2000, was responsible for two other offices and for the closing of a fourth office. She alleged that she had a blackout on April 17, 2000 and was subsequently disabled due to her workload.

By letter dated October 21, 2001, Isaiah Boyer, Jr., a customer service manager, stated that appellant was not required to work overtime but frequently missed work and then requested overtime to catch up on her daily work backup. He stated that appellant took annual leave because she was going to school and working at a veterinary hospital in addition to working at the employing establishment. Mr. Boyer stated that appellant's supervisory responsibilities were no greater than those of any other supervisor. He indicated that appellant missed mandatory staff meetings because of her alleged heavy workload yet he sometimes found her absent from the workplace during work hours. She also did not follow the schedule requiring her to divide her time equally among several offices to insure that mandatory work was completed and, instead, spent most of her time in one office. Mr. Boyer noted that appellant received a letter of warning on April 5, 2000 for failure to properly perform her supervisory duties. He indicated that, based on appellant's frequent request for overtime, he switched her work assignment with another supervisor who was able to perform appellant's duties without requesting overtime. Appellant responded to the change of assignment by calling in sick and never returned to work. Mr. Boyer stated that when appellant requested sick leave on April 24, 2000 he specifically asked if her illness was work related and she responded that she was having personal problems with her boyfriend and daughter and she later reported that her continued absence was due to a nonwork-related medical condition.

Appellant submitted medical evidence in support of her claim.

By decision dated February 22, 2002, the Office denied appellant's claim for an emotional condition on the grounds that she failed to establish that her condition was causally related to any compensable factor of employment.

Appellant requested reconsideration.

By decision dated May 16, 2003, the Office denied modification of its February 22, 2002 decision.

Appellant requested a hearing.

By decision dated September 25, 2003, the Office denied appellant's request for a hearing on the grounds that she was not entitled to a hearing as a matter of right and the issue could be resolved equally well by a request for reconsideration and the submission of new

evidence establishing that her emotional condition was causally related to compensable employment factors.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of the Act provides that, before review under section 8128(a), a claimant not satisfied with a decision of the Secretary of Labor is entitled, on a request made within 30 days after the date of issuance of the decision, to a hearing on her claim.¹ 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.²

ANALYSIS -- ISSUE 1

Appellant requested an oral hearing in this case. However, she had previously requested reconsideration and, therefore, under section 8124(b)(1) of the Act, she was not entitled to a hearing as a matter of right. The Office properly exercised its discretion and determined that her reconsideration request could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that her emotional condition was causally related to compensable factors of her employment. There is no evidence of record that the Office abused its discretion in denying appellant's hearing request.

LEGAL PRECEDENT -- ISSUE 2

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an individual's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁵

¹ 5 U.S.C. § 8124 (b)(1).

² *Claudio Vasquez*, 52 ECAB 496 (2002); *Herbert C. Holley*, 33 ECAB 140 (1981).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

Where appellant alleges compensable factors of employment she must substantiate such allegations with probative and reliable evidence.⁶

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 employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸

ANALYSIS -- ISSUE 2

Appellant alleged that her emotional condition was due to a heavy workload necessitating overtime work.⁹ Regarding appellant's allegation that she was overworked, the Board had held that overwork may be a compensable factor of employment.¹⁰ However, as with all allegations, overwork must be established on a factual basis.¹¹ In this case, appellant has submitted insufficient evidence to support her contention that she was overworked and, therefore, this contention cannot be deemed a compensable factor of employment

Mr. Boyer, a customer service manager, disputed appellant's claim.

The employing establishment has denied that appellant was overworked and explained that appellant voluntarily requested overtime because she did not complete her duties during her regular work hours due to frequent absences from work. Appellant has failed to provide sufficient evidence to establish her allegation that she was overworked by the employing establishment. Appellant has submitted no corroborating evidence. Therefore, this contention cannot be deemed a compensable factor of employment.¹²

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing. The Board further finds that appellant failed to establish that her emotional condition was causally related to any compensable factor of employment.

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁷ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470 (1993).

⁹ On appeal, appellant argues that she was "required" to work overtime because she "felt that she needed the overtime to complete her duties and, in that sense, the overtime was not voluntary."

¹⁰ *Sherry L. McFall*, 51 ECAB 436 (2000).

¹¹ *Id.*

¹² Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *Garry M. Carlo*, 47 ECAB 299 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 25 and May 16, 2003 are affirmed.

Issued: July 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member