United States Department of Labor
Employees' Compensation Appeals Board

FATIMA A. PARKER, Appellant	)	
and	)	**Docket No. 06-396**
	)	**Issued: May 2, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Fatima A. Parker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 16, 2005 decision which denied her request for a hearing, and the June 27, 2005 decision denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and the hearing denial in this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124(b)(1).

FACTUAL HISTORY

On April 9, 2005 appellant, then a 32-year-old mail handler, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to a conversation

with her supervisor on that date.[1] She first became aware of her condition and its relation to her work on April 9, 2005. Appellant stopped work from April 9 to 17, 2005.

The Office received an April 19, 2005 disability slip, in which Dr. Margaret Kravanya, an osteopath Board-certified in family practice, advised that appellant was disabled from April 9 to 16, 2005 and returned her to full duty.

By letters dated May 10, 2005, the Office informed appellant and the employing establishment of the evidence needed to support her claim and requested additional evidence within 30 days.

In an April 30, 2005 statement, appellant alleged that on April 9, 2005 she reported to the office of her supervisor, Wanda Harris, to obtain an assignment. She alleged that Ms. Harris improperly gave out the assignments and started to scream and yell in her face for appellant to "go to your bid." Appellant alleged that she tried to calmly explain to Mr. Harris that she had an "option" but her supervisor did not allow her an opportunity to explain. She alleged that the supervisor's actions along with those of Jackie Anderson, a coworker, caused a "hostile workplace" and that she could not work under these conditions. Appellant met with her coworkers, Ms. Anderson and John Long, as well as Otis Sturdivant, a union representative, about the situation. Mr. Long tried to explain to Ms. Harris that the bid assignments were wrong, and as appellant walked away, Ms. Harris turned to her and in a "belligerent, loud, and threatening voice stated '[g]o to scale seven now, right now and you better go now.'" Appellant felt provoked to retaliate and stated that she did not go to her bid assignment right away. She alleged that, when she was paged at 7:05 a.m. by Ms. Harris, she did not respond right away. When she finally showed up, Ms. Harris was yelling behind the glass and wanted documentation for her absence. She alleged that she gave Ms. Harris a form and advised her that she needed to seek medical attention. Appellant indicated that she did not get a copy of the CA-2 that she had filed and that, when she inquired on April 29, 2005 as to why her claim form was not submitted, she was informed by Ms. Harris that it was incomplete.

In a May 18, 2005 letter, the employing establishment controverted the claim and provided statements obtained by a postal inspector. In a May 5, 2005 statement, Ms. Harris noted that appellant's claim form was initially incomplete and that she held it until appellant returned to the employing establishment in order that she could provide the required information. She alleged that appellant's statement on the claim form was inaccurate. Ms. Harris explained that on the morning of April 9, 2005 she began handing out bid assignments when appellant became "loud saying the assignments were incorrect." She explained that appellant bumped into her as she walked past and Ms. Harris requested that appellant refrain from bumping into her. Ms. Harris alleged that appellant retorted that, if she had bumped into her, Ms. Harris "would have known it." She stated that appellant was loud and "pointing" and being held back by Mr. Long. Ms. Harris denied that she was intimidating, aggressive, belligerent or disrespectful. She also denied screaming or using threatening body language. Ms. Harris provided a May 3, 2005 statement which reiterated her statement to the inspectors. She noted that appellant was

[1] In a June 20, 2005 memorandum, the Office determined that appellant's claim should be treated as a traumatic injury claim as appellant's claim was for events on a single work shift on April 9, 2005.

upset with an error in a scale assignment but Ms. Harris corrected the error as soon as she made the bid assignments.

In a May 5, 2005 statement, Ms. Anderson explained that, on the morning of April 9, 2005, Ms. Harris was handing out assignments when appellant became "frustrated because of the scheduling." She described Ms. Harris' behavior as "firm, but not hostile." Ms. Anderson advised that appellant became "hostile and loud" and Ms. Anderson advised Ms. Harris that the behavior was worthy of discipline. She also explained that appellant bumped into Ms. Harris as she walked away. Ms. Anderson added that appellant stated that, if "she had bumped into [Ms.] Harris, then [Ms.] Harris would have felt it." She noted that appellant was pulled from the scene by Mr. Long, and was waiving her arms around.

In a May 5, 2005 statement, Mr. Long described Ms. Harris as "about the business" and appellant as "spoiled." On the morning of April 9, 2005, Ms. Harris was handing out bid assignments when she mistakenly gave appellant "an assignment out of order." Mr. Long explained the situation to appellant and Ms. Harris corrected the mistake; however, appellant continued to be upset. He alleged that the mistake was in relation to a bid instead of a scale and explained that a scale was "considered a better assignment because the worker does not have to abide by the regular break and lunch schedule on the scale as one does on the other assignments." Mr. Long also noted that as appellant walked away "she brushed against both him and [Ms.] Harris." He alleged that Ms. Harris told appellant not to "hit her" and appellant indicated, "if I wanted to hit you I would have hit you." Mr. Long grabbed appellant "as if in a hug and escorted her away from the area." He noted the distance between the two individuals was as close as 4 to 5 feet and as far away as 10 feet. Mr. Long alleged that, later that day, Ms. Harris was not angry while waiting for appellant. After hearing her being paged for about 30 minutes, Mr. Long called "her cell[ular] [tele]phone as a friend." He noted that she did not answer and later filed a claim. Mr. Long alleged that Ms. Harris did "not cuss, use physical violence, yell or scream."

In a May 6, 2005 statement, appellant indicated that, on April 9, 2005, Ms. Harris did not give her the option to work the "scale" as opposed to the "bid." She alleged that her supervisor stood one foot from her and screamed in her face. Appellant alleged that Ms. Harris screamed "I said go to your bid, go to your bid. I'm giving you a direct order." Appellant stated that she walked away for six or seven feet to speak with Mr. Sturdivant, a union representative. Appellant alleged that Ms. Anderson edged on Ms. Harris and encouraged her to "issue me discipline." She indicated that Mr. Long explained to Ms. Harris that the assignments were incorrect. Appellant denied bumping into Ms. Harris, and explained the threatening body language was comprised of finger pointing by her supervisor.

In a June 27, 2005 decision, the Office found that appellant did not sustain an emotional condition in the performance of duty. The Office found that she had not established any compensable employment factors.

On August 3, 2005 the Office received a request for a hearing from appellant, which was dated July 3, 2005, and postmarked on July 28, 2005. Appellant alleged that she never received anything from the Office other than the denial and reiterated her previous allegations. She

contended that the statement from Mr. Long was inaccurate as he wanted to remain a "neutral party" with management. She alleged that Ms. Harris had a history of inappropriate behavior.

By decision dated August 16, 2003, the Office denied appellant's request for an oral hearing on the grounds that the request was untimely. The Office found that she did not submit her request for an oral hearing within 30 days of the Office's June 27, 2005 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.

LEGAL PRECEDENT -- ISSUE 1

To establish that she sustained an emotional condition causally related to factors of her federal employment, a claimant 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.[2]

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.[3] 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.[4]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition on April 9, 2005 following receipt of a bid assignment by her supervisor. The Office in its June 27, 2005 decision found that appellant did not establish any compensable employment factors in the performance of duty. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Federal Employees' Compensation Act.

[2] *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).

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

[4] *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant alleged that her supervisor caused her stress-related condition by yelling and screaming at her after providing appellant with a bid assignment. The Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regularly or specially-assigned work duties and do not fall within the coverage of the Act.[5] It is well established that the assignment of work is an administrative matter.[6] The Board has found that an administrative or personnel matter will be considered to be an employment factor where the evidence establishes error or abuse on the part of the supervisor. In determining whether the supervisor erred or acted abusively, the Board has examined whether he or she acted reasonably.[7] Appellant has alleged that Ms. Harris was abusive to her on April 9, 2005, giving rise to her emotional condition.

In a statement dated May 5, 2005, Ms. Harris explained that she instructed appellant as to her bid assignment. Mr. Long noted that Ms. Harris mistakenly gave appellant a work assignment which, when corrected, caused appellant to become upset. Appellant acknowledged that she was not given the option to work on the scale assignment. The witnesses confirm that appellant became agitated. Ms. Anderson stated that appellant became "hostile and loud" and "bumped" into her supervisor. Mr. Long explained that appellant became upset about the assignment and "brushed" up against him and Ms. Harris. He also confirmed that Ms. Harris did not yell at appellant, as alleged, or intimidate her. While Ms. Harris noted a mistake in making the scale and bid assignment, she corrected the error and instructed appellant as to her proper assignment. Although appellant alleged that Ms. Harris was belligerent and sought to intimidate her, she did not provide sufficient evidence to support her allegations that the actions of her supervisor were abusive or hostile. The matter appears premised on appellant's preference to do work on a scale assignment rather than the bid assignment. As such her disability results from her frustration from not being allowed to work in a particular environment. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged that Ms. Harris' actions created a hostile environment. Verbal altercations and difficult relationships with supervisors, when sufficiently detailed by appellant and supported by the evidence, may constitute a compensable factor of employment.[8] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[9] Ms. Harris explained the reasons for her actions -- essentially that she directed that appellant perform the bid assignment and appellant reacted angrily to her instruction. While there may have been raised voices, it appears that appellant's reluctance to follow supervisory instructions initiated the exchange. Appellant did not submit any corroborating evidence to

[5] An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

[6] *See Robert W. Johns*, 51 ECAB 137 (1999).

[7] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[8] *Janet D. Yates*, 49 ECAB 240 (1997).

[9] *Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004).

support that Ms. Harris was abusive or hostile towards her. The witness' statement does not support appellant's allegations pertaining to their interaction that day. Ms. Anderson and Mr. Long corroborated the statement of Ms. Harris. They both stated that appellant became the loud voice and pushed up against Ms. Harris. As noted, both witnesses described Ms. Harris' behavior as "firm, but not hostile" and business like. Under the circumstances, appellant has not provided adequate evidence to support a compensable employment factor with respect to any verbal altercation.

Regarding appellant's allegations that the employing establishment mishandled her compensation claim, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[10]

Appellant has not met her burden of proof in establishing that she had an emotional reaction to regular or specially-assigned work duties or a requirement imposed by the employment. As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[11]

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with the decision of the Office is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Director.[12] The Board has noted that this section of the Act is unequivocal in setting forth the time limitations for requesting a hearing.[13] A claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.

The implementing federal regulations provide that 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 by the Branch of Hearings and Review.[14] 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.[15] A claimant is not entitled to a hearing or review of the written record if the request is not made within 30 days of the date of the decision for which review is sought.[16] The Office has the discretion to grant or deny a hearing request that is made

[10] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[11] *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

[12] *See* 5 U.S.C. § 8124(b)(1).

[13] *See Delmont L. Thompson*, 51 ECAB 155, 157 (1999).

[14] 20 C.F.R. § 10.615.

[15] 20 C.F.R. § 10.616(a).

[16] *See James Smith*, 53 ECAB 188, 192 (2001).

after the 30-day period. 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.[17]

ANALYSIS -- ISSUE 2

The issue is whether the Office abused its discretion by refusing to grant appellant a hearing. The Office issued a decision denying appellant's claim on June 27, 2005. Appellant's request for a hearing was postmarked July 28, 2005. A hearing request must be made within 30 days of the issuance of the decision as determined by the postmark of the request.[18] Since appellant did not request a hearing within 30 days of the Office's June 27, 2005 decision, she was not entitled to a hearing under section 8124 as a matter of right.

The Branch of Hearings and Review considered appellant's hearing request in its August 16, 2005 decision and denied it on the basis that appellant could pursue her claim by requesting reconsideration and submitting additional relevant and probative evidence.[19] An abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, action of the kind that no conscientious person acting intelligently would reasonably have taken prejudice, partiality, intentional wrong or action against logic.[20] There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request.

CONCLUSION

Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty. The Board also finds that the Office properly denied appellant's request for an oral hearing under section 8124(b)(1).

[17] 20 C.F.R. § 10.616(b). *See Herbert C. Holley*, 33 ECAB 140 (1981); *Rudolf Bermann*, 26 ECAB 354 (1975).

[18] 20 C.F.R. § 10.616(a).

[19] 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).

[20] *Delmont L. Thompson*, 51 ECAB 155 (1999); *Daniel J. Perea*, 42 ECAB 214 (1990); *Charles J. Prudencio*, 41 ECAB 499 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 16 and June 27, 2005 are affirmed.

Issued: May 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board