

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

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**K.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Worcester MA, Employer**

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**Docket No. 07-831  
Issued: July 13, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 5, 2007 appellant filed a timely appeal of a September 22, 2006 decision of the Office of Workers' Compensation Programs that denied his claim for an emotional condition and a December 11, 2006 decision that denied his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

**ISSUES**

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

**FACTUAL HISTORY**

On August 1, 2006 appellant, then a 67-year-old letter carrier, filed a traumatic injury claim, alleging that on July 28, 2006 he experienced "pressure by supervisor" and job stress in the course of his federal employment. He stopped work on July 28, 2006. The employing establishment controverted the claim.

In a July 29, 2006 report, Dr. Paul L. Hart, a family practitioner, noted that appellant suffered from a number of significant medical problems including hypertension. He added that appellant had a history of a "severe work-related accident the cause of which we were unable to fully establish." Dr. Hart noted that appellant eventually returned to work with the provision that he maintain close medical supervision and strict control of his hypertension. He indicated that appellant presented in his Office after he was "harassed at work." Dr. Hart noted that appellant was treated for shortness of breath, weakness, acute anxiety and elevated blood pressure. He opined that appellant did not suffer lasting damage from the episode and recommended that he not return to work unless the harassment was discontinued.

In an August 10, 2006 statement, Carol Cinelli, an injury compensation specialist for the employing establishment, controverted appellant's claim. She noted that, while appellant reported that he was being pressured by supervisors, he did not identify how the supervisor caused him to become stressed. Ms. Cinelli alleged that a supervisor merely instructed appellant to take out half the marriage mail along with the rest of his route. She alleged that, when he was refused assistance, a steward was requested and appellant subsequently reported that "he was feeling ill." Ms. Cinelli informed the Office that appellant had a long history of hypertension. She denied that appellant was harassed and alleged that his "perception of the situation caused his condition and not harassment from his supervisor." In an undated statement, received on August 10, 2006, Patrick Graham, a supervisor, alleged that on July 21, 2006 appellant started the workday by meeting with a union steward for approximately 10 minutes. Afterwards, appellant went to his case to pitch mail. Mr. Graham went over to appellant to instruct him regarding "marriage mail" and appellant responded that he needed assistance. He informed appellant that he did not have anyone to help at that time and that he was to do his own work. Mr. Graham informed appellant that he should work at least an hour and afterwards, he would "consider giving him more time to talk with a steward." He alleged that appellant requested a union steward and, after the meeting, informed the supervisor that he was not feeling well.

In letters dated August 18 and 23, 2006, the Office requested additional factual and medical evidence from appellant and the employing establishment.

On September 18, 2006 appellant alleged that the activities that he believed contributed to his condition were poor supervisors.

By decision dated September 22, 2006, the Office denied the claim on the basis that the evidence was insufficient to establish that the events occurred as alleged.

In correspondence postmarked November 6, 2006, appellant requested a telephonic hearing.

By decision dated December 11, 2006, the Office found that appellant was not entitled to a hearing as a matter of right as his November 6, 2006 request was not made within 30 days of the September 22, 2006 decision. The Office further considered the matter and denied a discretionary hearing because appellant could further pursue his claim by submitting new evidence with a reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

Workers' compensation law does not apply to each and every 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 concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions, for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board notes that appellant alleged that he was harassed and pressured by his supervisor at work on July 28, 2006. He alleged that he sustained an emotional condition as a result of an employment incident on July 28, 2006. The Board must, thus, initially review whether the alleged incident is compensable under the terms of the Act.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

The Board has characterized supervisory discussions of job performance and reprimands as administrative or personnel matters.<sup>7</sup> As noted, frustration from not being permitted to work in a particular environment is not compensable. Appellant did not describe any specific details as to why he believed that he was pressured or harassed by Mr. Graham. However, his supervisor provided a statement noting that on July 21, 2006 appellant started the workday by meeting with a union steward for approximately 10 minutes. Mr. Graham subsequently approached appellant at his case to instruct him regarding marriage mail and appellant responded that he needed assistance. He advised appellant that he did not have anyone to help him at that time and to do his own work. After an hour, the supervisor would consider giving him more time to talk with a steward. Appellant then requested a union steward and, after meeting with the steward, informed Mr. Graham that he was not feeling well. The Board notes that these allegations pertain to administrative matters.<sup>8</sup> Appellant has not presented evidence sufficient to establish that his supervisor acted abusively or unreasonably in the matter.

Appellant generally alleged that his supervisors pressured or harassed him, but did not provide a narrative description of any actions or incidents. For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>9</sup>

The Board finds that appellant has not established any compensable employment factors under the Act. Therefore, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary ... 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 Secretary."<sup>11</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the

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<sup>7</sup> *David C. Lindsey, Jr.*, 56 ECAB \_\_\_\_ (Docket No. 04-1828, issued January 19, 2005). Workers' compensation law does not cover an emotional reaction to an administrative or personnel action unless the evidence establishes error or abuse on the part of the supervisor. *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>8</sup> See *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004) (mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse).

<sup>9</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>10</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>11</sup> 5 U.S.C. § 8124(b)(1).

written record by a representative of the Secretary.<sup>12</sup> Office 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the Office properly denied appellant's request for a hearing. Section 8124(b) provides that, "before review under section 8128(a)," a claimant for compensation is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision.<sup>14</sup> Office regulation provided that a claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>15</sup>

Appellant's hearing request was postmarked on November 6, 2006. However, this was more than 30 days after the September 22, 2006 Office decision. Appellant's request was not timely made and, therefore, he had no right to a hearing.

Even though appellant has no right to a hearing if not requested within 30 days, the Office must exercise its discretion in either granting or denying a late request for a hearing.<sup>16</sup> The Office, in its December 11, 2006 decision, properly exercised its discretion in denying appellant's request for a hearing. The Office considered the matter and determined that any evidence not previously considered could be submitted, together with a request for reconsideration, to the Office. Consequently, the Office properly denied appellant's request for a hearing.

The Board finds that the Office properly exercised its discretion in denying appellant's hearing request and determining that his case could be addressed equally well by requesting reconsideration and submitting evidence not previously considered.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty. The Board also finds that the Office properly denied appellant's request for an oral hearing.

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<sup>12</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>13</sup> *Claudio Vasquez*, 52 ECAB 496 (2002).

<sup>14</sup> *See* 5 U.S.C. § 8124(b).

<sup>15</sup> 20 C.F.R. § 10.616(a).

<sup>16</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11 and September 22, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 13, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board