

rehabilitation job working for Postmaster Felix DeSantis. Instead, she was assigned to Elaine Owens, customer relations coordinator, to perform customer relations duties. Appellant alleged that Ms. Owens was hostile towards her. On one occasion, she requested a meeting with Acting Postmaster Chris Tinkham and Ms. Owens. Subsequently, appellant alleged daily retaliatory actions by Ms. Owens. She was subsequently assigned to Mr. DeSantis. Ms. Owens did not approve of the transfer to Mr. DeSantis. A decision was made to eliminate appellant's permanent rehabilitation position. She alleged that this was due to Ms. Owens' insistence on removing her from the facility. In April 2002, appellant's permanent rehabilitation position was terminated. She accepted another job, under duress, which violated her medical restrictions against repetitive motion activities. In May 2003, appellant was given a third rehabilitation job. However, the duties were never defined. The secretary assigned at that time expressed concern about working with appellant. In November 2005, appellant did not have a permanent position and management did not find her suitable employment. Due to the repeated job assignments she developed anxiety and depression. The record contains copies of appellant's rehabilitation jobs from August 1999 to May 2003. Appellant submitted medical evidence in support of her claim.

In a March 9, 2006 statement, Calvin Bagley, acting manager, Post Office Operations Area 2, stated that he had been appellant's supervisor since October 2005. In November 2005, appellant was notified that she would be transferred to the Raleigh Post Office, where she had worked previously, because there was no work for her in Mr. Bagley's office. Mr. Bagley stated that he never received any complaints from his secretary about working with appellant. He stated that appellant and his secretary seemed to have a good working relationship, although appellant advised him that the secretary did not like her.

By decision dated August 18, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable factor of employment.

By letter postmarked September 19, 2006, appellant requested an oral hearing. On February 20, 2007 the Office denied her request for a hearing on the grounds that it was not timely submitted within 30 days of the August 18, 2006 decision. The Office exercised its discretion and determined that the issue in the case, whether appellant had a work-related emotional condition, could be resolved equally well through a reconsideration request and the submission of additional evidence.¹

LEGAL PRECEDENT -- ISSUE 1

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 an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional

¹ Subsequent to the February 20, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

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.⁴

Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁵ The fact that a claimant has established compensable factors of employment does not establish entitlement to compensation. The employee must also submit rationalized medical opinion evidence establishing that he or she has an emotional condition that is causally related to the compensable employment factor.⁶ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by the claimant.⁷

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹⁰ As a rule, allegations

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁶ *James W. Griffin*, 45 ECAB 774 (1994).

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁰ *See Charles D. Edwards*, 55 ECAB 259 (2004).

alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that for several years she was assigned to different rehabilitation positions. Due to the repeated job transfers, she developed anxiety and depression.

Several allegations made by appellant concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ Appellant alleged that in August 1999 she was offered a permanent rehabilitation job working for Mr. DeSantis. Instead, she was assigned to Ms. Owens to perform customer relations duties. Appellant was subsequently assigned to Mr. DeSantis. A decision was made to eliminate her permanent rehabilitation position which she attributed to Ms. Owens' insistence on removing her from the facility. The assignment of job duties is an administrative function of a supervisor. There is insufficient evidence that management acted abusively or in error in making appellant's work assignments. Because there is insufficient evidence of error or abuse in the handling of these administrative or personnel matters, these allegations are not deemed compensable factors of employment.

Appellant alleged that Ms. Owens was hostile towards her. On one occasion, she requested a meeting with Mr. Tinkham and Ms. Owens. Thereafter, appellant alleged daily retaliatory actions from Ms. Owens. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. She must support her charges with probative and reliable evidence.¹⁴ There is insufficient evidence to establish that Ms. Owens harassed or discriminated against appellant. Appellant's allegations are not detailed as to specific instances of retaliation on the part of her supervisor or supported by evidence, such as witness statement. Therefore, this allegation is not deemed a compensable employment factor.

The Board finds that certain allegations made by appellant are not established as factual. Appellant alleged that, in April 2002, her permanent rehabilitation position was terminated and her new position violated her medical restrictions. The Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if such activity was substantiated by the record.¹⁵ However, appellant provided insufficient evidence

¹¹ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹² *Charles D. Edwards*, *supra* note 10.

¹³ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁴ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

¹⁵ *Diane C. Bernard*, 45 ECAB 223 (1993).

that the employing establishment assigned her to perform work that was beyond her physical limitations. Therefore, this allegation is not established as factual and is not deemed a compensable employment factor. In May 2003, appellant was given a third rehabilitation job. However, the duties were never defined. Appellant did not provide evidence to establish that her job duties were not provided to her. Therefore, this allegation is not established as factual and is not deemed a compensable employment factor. Appellant alleged that the secretary assigned in May 2003 expressed concern about working with her. Mr. Bagley was appellant's supervisor at the time and he stated that he never received any complaints from his secretary about working with appellant. There is insufficient evidence to establish that the secretary expressed concern about working with appellant. Appellant alleged that, in November 2005, she did not have a permanent position and management did not find her suitable employment. She provided no evidence to support this allegation. Therefore, it is not deemed a compensable factor of employment.

For the foregoing reasons, appellant has not established a compensable employment factor under the Act. Therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁶

LEGAL PRECEDENT -- ISSUE 2

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.¹⁷ 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 the hearing is sought.¹⁸ 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 the hearing is sought.¹⁹ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.²⁰ 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.²¹

¹⁶ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. See *Barbara J. Latham*, 53 ECAB 316 (2002); *Garry M. Carlo*, 47 ECAB 299 (1996).

¹⁷ 5 U.S.C. § 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. See *Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁸ 20 C.F.R. § 10.616(a).

¹⁹ *James Smith*, 53 ECAB 188 (2001).

²⁰ 20 C.F.R. § 10.616(b).

²¹ *James Smith*, *supra* note 19.

ANALYSIS -- ISSUE 2

Appellant's request for a hearing was postmarked September 19, 2006, more than 30 days after the Office's August 18, 2006 decision.²² Therefore, she was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that the issue in the case, whether she had a work-related emotional condition, could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a hearing in its February 20, 2007 decision.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to compensable factors of employment. The Board further finds that the Office did not abuse its discretion in denying appellant's request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 20, 2007 and August 18, 2006 are affirmed.

Issued: September 21, 2007
Washington, DC

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

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

²² The request was postmarked 32 days after the August 18, 2006 decision.