

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

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**K.F., Appellant**

**and**

**U.S. POSTAL SERVICE, ANNSHIRE ANNEX,  
Louisville, KY, Employer**

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**Docket No. 08-1425  
Issued: December 22, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 16, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 18, 2008 finding that she had not established an emotional condition causally related to her federal employment. She also appealed a March 25, 2008 decision of the Branch of Hearings and Review denying her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an emotional condition due to factors of her federal employment; and (2) whether the Office's Branch of Hearings and Review properly denied her request for an oral hearing as untimely.

## **FACTUAL HISTORY**

On July 31, 2007 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that she experienced panic attacks on December 8, 2006 due to sexual harassment in the performance of her federal job duties. She submitted a note dated December 14, 2006 from Dr. Katherine Witherington, a Board-certified internist, who noted that appellant had filed sexual harassment charges against her supervisor. Dr. Witherington diagnosed an acute stress reaction.

In a letter dated December 11, 2007, the Office requested additional factual and medical evidence in support of appellant's claim. It allowed 30 days for a response. On January 16, 2008 appellant alleged that she was sexually harassed by a supervisor through attempts to kiss her and an inappropriate photograph. She stated that several of her coworkers became aware of the charges and gave her "the silent treatment." On December 14, 2006 appellant could not "take the pressure of people pointing, talking and making comments...." She stated that her supervisor was instructed to have no contact with her while at work. Appellant submitted a January 11, 2008 report from a licensed clinical social worker. She also submitted a December 21, 2007 report from Dr. Witherington. Appellant submitted a grievance decision from the employing establishment finding that management's decision to deny administrative leave was appropriate.

By decision dated January 18, 2008, the Office denied appellant's claim for an emotional condition, finding that she failed to establish a compensable factor of employment.<sup>1</sup>

Appellant requested an oral hearing on a form dated February 18, 2008 and postmarked February 23, 2008. By decision dated March 25, 2008, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely filed. It found that her claim could be equally well addressed through the reconsideration process.

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related an employee'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 his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

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<sup>1</sup> Following the Office's January 18, 2008 decision, appellant submitted additional new evidence. As it did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *See Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

For harassment or discrimination to give rise to a compensable disability, there must be evidence 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.<sup>4</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>5</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>6</sup>

Although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act. However, to the extent that the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>7</sup>

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

Appellant attributed her emotional condition to sexual harassment by her supervisor. She alleged that he attempted to kiss her. Appellant also noted the discussion of this claim by her coworkers and the denial of administrative leave by the employing establishment. However, she failed to submit any factual evidence to establish that the alleged sexual harassment incident actually occurred. Appellant did not submit any witness statements or investigative reports to substantiate her claim that her supervisor acted inappropriately toward her. Without evidence to substantiate that the harassment occurred as alleged, the Office properly found that appellant had not established sexual harassment as a compensable factor of employment.

In regard to appellant's allegation that her coworkers were aware of her claim of sexual harassment and treated her differently, she also failed to submit any evidence to substantiate harassment or discrimination by her coworkers. She again failed to submit any factual evidence to establish that the harassment occurred. Appellant's mere perception of harassment is not compensable.

Appellant also attributed her emotional condition to management's decision to deny a request for administrative leave. As noted, although leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act without evidence to demonstrate that the employing establishment either erred or acted abusively. Appellant failed to submit any evidence that management acted abusively in denying her leave request. For those reasons, she has not

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<sup>4</sup> *Reco Roncoglione*, 52 ECAB 454, 456 (2001).

<sup>5</sup> *Penelope C. Owens*, 54 ECAB 684, 686 (2003).

<sup>6</sup> *Beverly R. Jones*, 55 ECAB 411, 417 (2004).

<sup>7</sup> *James P. Guinan*, 51 ECAB 604, 607 (2000).

established a compensable employment factor under the Act. Appellant has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>8</sup>

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

Section 8124(b)(1) of the Act provides in pertinent part as follows:

“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 issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>9</sup>

The claimant can choose between two formats: an oral hearing or a review of the written record.<sup>10</sup> The requirements are the same for either choice.<sup>11</sup> The Board has held that section 8124(b)(1) is “unequivocal” in setting forth the time limitation for requesting hearings or reviews of the written record. A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking<sup>12</sup> and before the claimant has requested reconsideration.<sup>13</sup> However, when the request is not timely filed or when reconsideration has previously been requested, the Office may within its discretion, grant a hearing or review of the written record, and must exercise this discretion.<sup>14</sup>

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

Appellant’s request for an oral hearing was postmarked on February 23, 2008 more than 30 days after the Office’s January 18, 2008 decision. Therefore, her request for an oral hearing was not timely and she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review exercised its discretion in denying appellant’s request for an oral hearing by finding that her claim could proceed through the reconsideration process with the submission of evidence not previously considered. The Branch of Hearings and Review did not abuse its discretionary authority in denying appellant’s request for a hearing.

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<sup>8</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>9</sup> 5 U.S.C. §§ 8101-8193, § 8124(b)(1).

<sup>10</sup> 20 C.F.R. § 10.615.

<sup>11</sup> *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

<sup>12</sup> 20 C.F.R. § 10.616(a). *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>13</sup> *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

<sup>14</sup> *Id.*

**CONCLUSION**

The Board finds that appellant failed to submit the necessary factual evidence to substantiate a compensable factor of employment as causing or contributing to her diagnosed emotional condition and that the Office therefore properly denied her claim. The Board further finds that appellant's request for an oral hearing was not timely and that this request was properly denied by the Branch of Hearings and Review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25 and January 18, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 22, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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