

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Mount Prospect, IL, Employer)

**Docket No. 08-410
Issued: July 8, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2007 appellant filed a timely appeal of an April 16, 2007 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an emotional condition in the performance of duty and an August 16, 2007 nonmerit decision, denying her request for an oral hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a hearing as untimely pursuant to 5 U.S.C. § 8124.

FACTUAL HISTORY

On January 31, 2007 appellant, then a 33-year-old city letter carrier, filed a claim for an emotional condition. On January 20, 2007 she first became aware of her post-traumatic stress disorder. On January 31, 2007 appellant first realized that this condition was caused by her

federal employment. On January 20, 2007 she was delivering mail when she was approached by a male subject who tried to get into the vehicle with her. He stated that he wanted to get to know her better. Appellant stated that she had been having flashbacks of this incident. She could not sleep or focus. Postal inspectors told her to call the Employees' Assistance Program which stated that all of her symptoms started on the day of the incident. Appellant stopped work on January 31, 2007. On the claim form, the employing establishment stated that appellant's injury was caused by a juvenile as indicated in a police report.

In subsequent narrative statements, appellant further described the January 20, 2007 incident. After providing a description of the suspect to the police, he was apprehended. She and a female coworker who had been involved in a similar incident identified the suspect at a police station. Appellant filed reports with the police and postal inspectors. On January 22, 2007 she worked on her regular route and thereafter she delivered mail on other routes. Appellant feared that the suspect would retaliate against her while she worked on her route.

A January 31, 2007 report of Carla Spellman, a licensed clinical professional counselor, stated that appellant suffered from acute stress reaction along with major depressive disorder. She recommended medical leave for a minimum of two weeks and a medical evaluation for pharmacological intervention. In a February 2, 2007 report, Ms. Spellman reviewed a history of the January 20, 2007 incident. She stated that following this incident appellant experienced acute stress disorder which included, recurrent distressing dreams, reliving the traumatic event, intense psychological distress at internal and external cues to the traumatic event, sleep and appetite disturbance, difficulty concentrating and hyper vigilance. Ms. Spellman stated that she should be offered another route upon her return to work. In a February 16, 2007 report, she stated that appellant started new medication and required at least one more week of medical leave to adjust to it. Appointment slips indicated that appellant was scheduled to be examined by Dr. Inna Dubinsky, a psychiatrist, on January 31, 2007 and Ms. Spellman on February 9, 2007. In a January 31, 2007 report, Dr. Dubinsky reviewed a history of the January 20, 2007 incident. Appellant's reaction included being extremely anxious, sleeping poorly and having flashbacks and a poor appetite. Dr. Dubinsky opined that she suffered from stress. She ruled out depressive episode.

By letter dated February 27, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional factual and medical evidence she needed to submit within 30 days to support her claim of injury. Also on February 27, 2007 the Office requested that the employing establishment respond to appellant's allegations and provide postal inspector reports regarding the January 20, 2007 incident within 30 days. The employing establishment did not respond within the allotted time period.

On March 14, 2007 appellant submitted Ms. Spellman's February 23, 2007, report which released appellant to return to work. Ms. Spellman restricted her from being assigned to the same mail route on which she was accosted in January 2007.

By decision dated April 16, 2007, the Office denied appellant's claim, finding that she did not sustain an emotional condition in the performance of duty. The factual evidence of record established that the January 20, 2007 incident occurred at the time, place and in the manner alleged. The medical evidence of record, however, failed to establish that appellant

sustained an emotional condition causally related to the accepted January 20, 2007 employment incident.

On July 8, 2007 appellant requested an oral hearing before an Office hearing representative. The request was postmarked July 18, 2007.

In an August 16, 2007 decision, an Office hearing representative denied appellant's request for a hearing on the grounds that it was untimely under section 8124. He stated that her request was postmarked July 18, 2007, which was more than 30 days after the issuance of the Office's April 16, 2007 decision and, therefore, she was not entitled to a hearing as a matter of right. The hearing representative nonetheless considered the matter in relation to the issue involved and determined that it could be addressed equally well on reconsideration, by submitting evidence not previously considered which established that appellant sustained an injury as alleged.

LEGAL PRECEDENT -- ISSUE 1

A claimant 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 factors of her federal employment.¹ To establish that she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁴ 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 under the Act.⁵ When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.⁶

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁶ *Lillian Cutler*, *supra* note 3.

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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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

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 Act. 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.⁹ 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.¹⁰ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.¹¹

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition casually related to her employment. She explained that on January 20, 2007 she was followed and verbally confronted by a man while delivering mail on her route. The employing establishment stated that appellant's emotional condition was caused by a juvenile as indicated in a police report. Based on this uncontradicted evidence, the Board finds that appellant has established that she was followed and verbally confronted by a man while performing her work duties as a city letter carrier on January 20, 2007. Therefore, this incident constitutes a compensable employment factor. The Board, however, finds the medical evidence of record insufficient to establish that the accepted employment factor caused an emotional condition.

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ *Lillian Cutler*, *supra* note 3.

¹⁰ *Michael L. Malone*, 46 ECAB 957 (1995).

¹¹ *Charles D. Edwards*, 55 ECAB 258 (2004).

The reports from Ms. Spellman, a licensed clinical professional counselor, do not constitute probative medical evidence inasmuch as a professional licensed counselor is not considered to be a physician under the Act.¹²

Dr. Dubinsky's January 31, 2007 report stated that appellant suffered from stress. She did not opine that her emotional condition was causally related to the January 20, 2007 compensable employment factor.

Appellant has provided no further evidence to address whether she sustained an emotional condition causally related to the accepted employment factor of being followed and verbally confronted by a man while delivering mail on her route.

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed emotional condition is causally related to the accepted compensable employment factor.

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of a final decision by the Office.¹³ Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹⁴ The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹⁵

Section 10.616(a) of Title 20 of the regulations further provides:

“A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.”¹⁶

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, including when the request is made after the 30-day period for requesting a hearing and that the Office must exercise this discretionary authority in

¹² See 5 U.S.C. § 8101(2); see also *Jeannine E. Swanson*, 45 ECAB 325, 336 (1993); *Arnold A. Alley*, 44 ECAB 912 (1993); *Ceferino L. Gonzales*, 32 ECAB 1591, 1594 (1981).

¹³ 5 U.S.C. § 8124(b)(1).

¹⁴ 20 C.F.R. § 10.615; *Gerard F. Workinger*, 56 ECAB 259 (2005).

¹⁵ *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

¹⁶ 20 C.F.R. § 10.616(a); see also *Gerard F. Workinger*, *supra* note 14.

deciding whether to grant a hearing.¹⁷ In these instances, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹⁸

ANALYSIS -- ISSUE 2

Appellant's July 8, 2007 request for a hearing was made more than 30 days after the Office issued its April 16, 2007 decision. As her request was untimely, appellant was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion and determined that appellant's request for an oral hearing could be equally well addressed by requesting reconsideration and submitting additional evidence establishing that she sustained an injury as alleged.¹⁹ The Board has held that the only limitation on the Office's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and probable deduction from established facts.²⁰ The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's request for an oral hearing as untimely under 5 U.S.C. § 8124.

¹⁷ *Samuel R. Johnson*, 51 ECAB 612 (2000); *Eileen A. Nelson*, 46 ECAB 377 (1994).

¹⁸ *Claudio Vasquez*, 52 ECAB 496 (2001); *Johnny S. Henderson*, 34 ECAB 216 (1982).

¹⁹ *See Joseph R. Giallanza*, 55 ECAB 186 (2003).

²⁰ *See André Thyratron*, 54 ECAB 257 (2002).

ORDER

IT IS HEREBY ORDERED THAT the August 16 and April 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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