United States Department of Labor
Employees' Compensation Appeals Board

C.Y., Appellant	)	
and	)	**Docket No. 11-1068**
	)	**Issued: November 16, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2010 appellant filed a timely appeal from a September 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim and a November 4, 2010 nonmerit decision which denied his request for an oral hearing. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 sustained an emotional condition in the performance of duty; and (2) whether OWCP properly denied his request for an oral hearing as untimely.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 22, 2010 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that on January 28, 2010 he first became aware of his stress and anxiety. He stated that since he moved to the employing establishment's location he was constantly harassed and his health has worsened. Appellant was fine until his duties were monitored for time, which put pressure on him. He stated that management gave letter carriers express mails to deliver before noon and 30 minutes of additional work but still required them to finish by 5:00 p.m. If mail carriers did not return on time, management took action against the carrier which led to dismissal. When appellant informed management that he could not give them what they wanted, they harassed, threatened and demeaned him. This treatment caused him high blood pressure, stress and anxiety.

Appellant also provided specific incidents when he felt harassed, threatened and demeaned. On October 24, 2009 he reported that the brakes of the long life vehicle (LLV) he drove did not work. Isaac Matthews, supervisor of customer services, test drove the LLV and told appellant he found no brake problems. When appellant filled out a vehicle repair tag, Mr. Matthews would not sign it and shouted at him "Are you crazy?" He felt that his safety was jeopardized, which caused him stress, nerves and high blood pressure. On November 18, 2009 appellant reported that the LLV had no horn and Mr. Matthews responded "[b]ull shit." On January 30, 2010 he informed management that the right front signal light of the LLV did not work, but Mr. Matthews forced him to drive it.

On January 5, 2010 Mr. Matthews issued a seven-day suspension letter for "Unsatisfactory Performance and Unprofessional Estimate." When appellant requested to see his union steward, management refused his request because the union steward was on vacation. He continued to work but after 45 minutes his stress levels were so high that he did not feel well. Appellant told management that he needed to go home because he did not feel well, and they informed him that if he went home it would be considered an unscheduled absence. On January 13, 2010 Mr. Matthews told appellant to fill out mis-sorted, mis-sent and mis-sequenced (3M) case paperwork, but he refused to fill it out because it was not an official U.S. Postal Service form and he was off the clock. He then followed appellant outside and told him that whenever he forgot something in the future, he would be written up.

Appellant submitted medical reports from Dr. Ramarao Makkena, a psychiatrist, who treated him for major depression and anxiety disorder and excused him from work from February 12 to 15, 2010.

In a February 23, 2010 letter, the employing establishment controverted appellant's claim alleging that he did not identify specific employment factors and was merely reacting to management's review of his duties. It submitted a description of his position and additional personnel forms.

In a February 24, 2010 narrative statement, Mr. Matthews refuted appellant's statements regarding the various LLV incidents. When appellant reported that the LLV he drove had no brakes, Mr. Matthews told him he would get a replacement vehicle. When Mr. Matthews arrived with the replacement vehicle, he drove appellant's vehicle in the parking lot and it stopped each

time. He also drove it back to the employing establishment, which was approximately five miles away and the brakes worked fine. The next morning, vehicle maintenance was unable to find a problem with the brakes. Mr. Matthews stated that he never told appellant to drive the vehicle with no brakes, never shouted that appellant was crazy when approached with a vehicle repair tag and never responded "[b]ull shit" when appellant reported that the horn did not work. Regarding the January 30, 2010 incident, he inspected the vehicle and observed that the right front signal light worked. Mr. Matthews stated that appellant had reported problems with vehicles in the past, but when vehicle maintenance came to repair the problem, they found nothing wrong.

Regarding the January 5, 2010 incident, Mr. Matthews explained that he told all employees that they would not get a shop steward immediately, but one would be provided within a reasonable amount of time, which was normally within two to three days. He explained that he never told appellant that the union steward was on vacation and that appellant did not follow orders that day. Instead, appellant refused to deliver his route unless he talked to a union steward. Mr. Matthews informed him that, if he did not follow instructions and deliver his route, he would receive corrective action. Appellant left for approximately 20 minutes, came back and turned in a form for sick leave.

In a February 22, 2010 statement, H.J. Crandall, the postmaster, stated that appellant was a city letter carrier whose duties included casing and delivering letters, flats and parcels. He reported that management expected nothing more or less from appellant than any other carrier and refuted that appellant was expected to be back to the office on time even when given extra work. Mr. Crandall explained that appellant was only given additional work when appellant stated that he would be back in time and volunteered for additional work by signing his name on the overtime desired list. He also stated that every employee who took an unscheduled absence from work was noted as an unscheduled absence even if appellant went home in the middle of the day.

On March 24, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and addressed the factual and medical evidence needed to establish his claim.

In a May 20, 2010 narrative statement, appellant explained that he felt his supervisors did not treat him with dignity and respect and always demeaned him when interacting with him. He stated that it was not relevant whether someone felt the brakes were adequate because he was the one who drove the vehicle. Appellant also noted that management's expectations of the time it would take to complete his duties were an additional cause of stress. He submitted safety violation reports, vehicle repair tags requesting for brakes to be repaired, a November 7, 2009 report of hazard or unsafe conditions and various grievance forms.

In a November 18, 2008 affidavit, appellant stated that on May 27, 2008 at 7:30 a.m. many workers were on the workroom floor waiting to clock in when Karen Rodriguez, a supervisor, singled him out and harassed him. Ms. Rodriguez told appellant that he was not allowed in the workroom floor before 7:30 a.m., which caused his anxiety to build up. While appellant was preparing for his route, she came over to him and started talking to him. Appellant asked that Ms. Rodriguez please leave him alone so he could calm down, but she ignored his

request and continued to talk to him. Aaron Lawson, his manager, also came over and stood next to his case staring at him. When appellant asked Mr. Lawson to leave, Mr. Lawson responded, "I [did not] say anything. I [am] just standing here." Appellant felt that management was intimidating him, which caused his anxiety to build up, induced chest pain and made him start shaking.

In a January 22, 2010 dispute resolution decision, a union and U.S. Postal Service representative reported that the January 5, 2010 seven-day notice of suspension would be rescinded.

In an April 7, 2010 narrative statement, Michael Pelliccia, appellant's union steward, stated that on March 25, 2010 appellant met with his station manager about filling out 3M case paperwork. Appellant stated that on January 13, 2010 Mr. Matthews harassed and threatened him, even though he was already off the clock, by ordering him to fill out 3M case paperwork. He did not fill out the form because it was not an official U.S. Postal Service form, and he was off the clock. Mr. Matthews followed appellant outside and told him that whenever he forgets something in the future, he would be written up.

In an April 12, 2010 letter, David Destouche, a retired letter carrier stated that he had known appellant since he first started as a letter carrier in 1987 and remembered appellant as a dedicated worker who never complained and had no problems with anyone. In 2008 appellant told Mr. Destouche that his supervisors were harassing him and he was hospitalized for job-related stress. He explained to Mr. Destouche that his supervisors were also disrespectful to him and would write him up whenever he reported an incident. Appellant's supervisor also told appellant to drive an unsafe LLV and gave him a hard time when he refused to drive it.

In an April 27, 2010 e-mail, Steven Montuori, a coworker, stated that he had known appellant for the past 22 years and noticed in the past two years that appellant called him about problems at work and feeling stressed out. Appellant's major complaint was that his supervisors were constantly on top of him watching everything he did and always found something wrong.

In a May 13, 2010 note, Ibrahm Monteagude, a coworker, stated that on January 13, 2010 he saw and heard Mr. Matthews talk to appellant with a bad attitude. Mr. Matthews also appeared angry.

In a May 22, 2010 narrative statement, Linda Phillips, supervisor of customer services, reported that she never used any type of profanity with appellant and only spoke to him about his performance. She explained that if his return call exceeded the scope of his workload a supervisor instructed him to take relief to ensure that his assignment was completed on time. Ms. Phillips also stated that, while she was the manager at the Oak Street Station, she did not recall appellant complaining about stress and anxiety.

In a July 2, 2010 narrative statement, Karen Rodriguez, the active delivery operations supervisor, reported that on May 27, 2008 she observed appellant walking behind the city carrier's case where the box section was located in the workroom and instructed him that he was not allowed on the workroom floor if he was not on the clock due to safety and liability issues. Appellant responded by walking towards the break room, lifting his hands towards her, and

making loud and aggressive statements such as: "Just leave me alone;" "Don't talk to me;" and "Get lost." After all the carriers had clocked in and were casing mail, Ms. Rodriguez continued her supervisory duties by asking each carrier about their leaving and returning time. When she asked appellant about his leaving and returning time, he became very aggressive towards her by moving his hands around, pointing them towards her, yelling, and telling her to leave this area. Ms. Rodriguez stated that all her conversations with him were in a professional way and strictly work related. She disputed appellant's statement that she spoke to him after instructing him to leave the workroom floor; rather, she inquired only as to his leaving and returning times. Ms. Rodriguez also provided an August 22, 2008 e-mail and August 6, 2010 letter relating appellant's allegations and her similar responses.

In an August 5, 2010 narrative statement, Mr. Crandall reported that on the day that appellant received a seven-day suspension appellant was extremely loud and belligerent, demanding to see a steward, even though he was told numerous times that a steward was not available at that time and one would be provided as soon as possible. He explained that appellant was issued a suspension letter because he regularly missed his return estimate by a large estimate, sometimes as much as two hours. Regarding the incidents with the LLV vehicle, Mr. Crandall stated that when management switched vehicle assignments appellant became very, very angry. Later that day, appellant called the employing establishment and stated that the brakes were bad. Mr. Matthews obtained another vehicle, took it to him and drove the other vehicle back to the employing establishment. A certified mechanic checked the brakes the next morning and reported that nothing was wrong with them. The next week, appellant wrote the brakes up again and was given an alternative vehicle. A certified mechanic from the vehicle maintenance facility adjusted the brakes even though he reported nothing was wrong with them. The next time appellant drove the vehicle, he wrote the brakes up a third time. Mr. Crandall reported that many other carriers had driven the vehicle during this time frame and reported nothing wrong with the brakes. He stated that there was no interaction with appellant that went beyond what normally took place in a city carrier operation.

In a decision dated September 20, 2010, OWCP denied appellant's claim for an emotional condition finding that his injury did not arise out of the course of employment. It determined that his emotional reaction to an administrative or personnel matter was not covered under FECA and that his employing establishment did not act unreasonably. OWCP further determined that mere perception of harassment and discrimination was not compensable under FECA.

In an appeal form dated October 20, 2010 and postmarked October 21, 2010, appellant requested an oral hearing before OWCP's hearing representative and submitted an October 20, 2010 narrative statement.

By decision dated November 4, 2010, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing as untimely filed. It exercised its discretion and denied his request finding that the issue in his case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that he sustained an emotional condition in the performance of duty.

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 he claims compensation was caused or adversely affected by factors of his federal employment.[2] To establish that he 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 he 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.[3]

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 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 duties or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[4] 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.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specifically assigned work duties of the employee and are not covered under FECA.[6] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[7] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[8]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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

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[2] *Pamela R. Rice,* 38 ECAB 838 (1987).

[3] *See Donna Faye Cardwell,* 41 ECAB 730 (1990).

[4] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott,* 52 ECAB 309 (2001); *Lillian Cutler,* 28 ECAB 125 (1976).

[5] *Gregorio E. Conde,* 52 ECAB 410 (2001).

[6] *See Matilda R. Wyatt,* 52 ECAB 421 (2001); *Thomas D. McEuen,* 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[7] *See William H. Fortner,* 49 ECAB 324 (1998).

[8] *Ruth S. Johnson,* 46 ECAB 237 (1994).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[9] If a claimant does implicate a factor of employment, OWCP 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, it must base its decision on an analysis of the medical evidence.[10]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an emotional condition as a result of management harassing, threatening and demeaning him. In a September 20, 2010 decision, OWCP denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are considered compensable employment factors according to FECA.

The Board notes initially that appellant has not alleged that the actual performance of his job duties caused his emotional condition, but rather he has alleged that his supervisors' actions caused his condition.

Appellant asserted that he was constantly harassed, demeaned and threatened by management when his duties were watched for time and he informed them that he could not give them what they wanted within that time frame. He also alleged that he was singled out by a supervisor to leave the workroom if he had not yet clocked in. Appellant further described incidents when he reported that his LLV vehicle did not work properly, but management ordered him to drive it even though he felt unsafe. Lastly, he stated that his manager forced him to fill out 3M case paperwork even though he was off the clock. The Board notes that harassment or verbal abuse by a claimant's supervisor or coworker may constitute a compensable factor of employment under FECA. In evaluating claims under FECA, the term "harassment" is synonymous, as generally defined with a persistent disturbance, torment or persecution.[11] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[12] An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[13] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative reliable evidence.[14]

[9] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[10] *Id.*

[11] *K.W.*, 59 ECAB 271 (2007).

[12] *Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Joel Parker, Sr.*, 43 ECAB 220 (1991); *G.S.*, Docket No. 09-764 (issued December 18, 2009).

[13] *V.W.*, 58 ECAB 428 (2007); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

[14] *David S. Gilreath*, 56 ECAB 241 (2005); *Ruthie M. Evans*, 41 ECAB 416 (1990).

The Board finds that the factual evidence of record does not support appellant's claim of harassment. Appellant made general assertions that management put pressure on him to finish on time even when they gave him 30 minutes of additional work and a few express mails. He explained that management gave letter carriers express mails to deliver before noon and 30 minutes of additional mail, but still required them to finish by 5:00 p.m. The employing establishment, however, refuted appellant's assertions. Mr. Crandall stated that appellant was not expected to be back in the office on time when given extra work and was not singled out for additional duties. He explained that appellant was only given additional work when he requested overtime. Ms. Phillips also stated that, if appellant's return call exceeded the scope of his work load, he was provided relief to ensure that his assignment was completed on time. The evidence, therefore, is insufficient to show that appellant was treated disparagingly or unreasonably with regards to his assertions of harassment. There is no other written evidence to support his allegations. Appellant in alleging harassment by management in the conduct of supervisory functions must establish error or abuse.[15]

Appellant also asserted that on January 13, 2010 he refused to complete 3M case paperwork because it was not official U.S. Postal Service paperwork and he was off the clock. Mr. Matthews followed him outside and told him that, whenever he forgot something, he would be written up. Although Mr. Monteagude confirmed that on January 13, 2010 he witnessed Mr. Matthews talk to appellant with a bad attitude and appeared angry, the Board has generally held that being addressed in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[16] There is no further specific information about that incident to establish verbal abuse. Thus, this evidence does not establish that harassment or discrimination did, in fact, occur.

Appellant further described a May 27, 2008 incident when Ms. Rodriguez singled him out in the workroom floor and told him that he was not allowed to be there before signing in. He further stated that Ms. Rodriguez came over and talked to him while he was preparing for his route and refused to leave when he asked her to leave him alone. Appellant stated that Mr. Lawson also came over to observe his work, which caused appellant to feel like management was intimidating him. The employing establishment, however, denied appellant's allegations. Ms. Rodriguez explained that she asked appellant to leave the workroom floor pursuant to workplace rules about safety and liability. She also stated that, after all the carriers clocked in, she continued her supervisory duties by asking each carrier about their coming and going times. When Ms. Rodriguez asked appellant about his return time, he became very aggressive towards her and yelled at her to leave his area. Mr. Lawson also came over to appellant to try to calm him down. The Board notes that an employee's complaints regarding the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties; and that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or

[15] *M.D.*, 59 ECAB 211 (2007).

[16] *T.G.*, 58 ECAB 189 (2006); *see also L.H.*, Docket No. 10-2045 (issued July 14, 2011).

abuse.[17] The Board finds that Ms. Rodriguez did not act erroneously or abusively when asking appellant to leave the workroom floor and for his leaving and return time.

Appellant described several incidents when the brakes, horn and right front signal light of his LLV vehicle did not work properly. While he alleges that Mr. Matthews screamed at him, used profanity and forced him to drive the vehicle without brakes, Mr. Matthews denies these events. Mr. Matthews stated that he never used profanity, shouted at appellant, nor forced him to drive the LLV without breaks. He and Mr. Crandall both noted that he drove appellant's LLV back to the employing establishment, about five miles and the brakes worked fine. Vehicle maintenance was also unable to find a problem with the brakes. Mr. Matthews also stated that when he went to check on the right front signal the light worked properly. Both he and Mr. Crandall noted that appellant had reported problems with the vehicles in the past but vehicle maintenance was never able to find anything wrong with the vehicle. The Board finds that Mr. Matthews did not scream at appellant or use profanity as the record contains conflicting evidence and there are no other witness statements supporting appellant's allegations. Thus, the Board does not find sufficient evidence to establish that appellant's supervisors engaged in harassment or other threatening behaviors.

Based on the evidence of record, the Board finds that appellant has not established a factual basis for his allegations that he was harassed, threatened and demeaned by the employing establishment. Therefore, appellant has failed to establish a compensable employment factor.

Appellant further alleges that management caused him increased stress and anxiety on January 5, 2010 when he was erroneously issued a suspension letter for unsatisfactory performance and not allowed to speak with a union steward. He stated that when he requested to go home because he did not feel well, management advised him that it would be considered an unscheduled absence and disciplinary action may be taken. The Board finds that these matters are administrative functions of the employer as they relate to procedures and requirements of the employer and disciplinary actions. An administrative or personnel matter will be considered a compensable employment factor where the evidence reveals error or abuse on the part of the employing establishment.[18] To determine whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[19]

In an August 5, 2010 statement, Mr. Crandall explained that appellant was issued a suspension letter because he was continuously late, an average of two hours late, regarding his return time. Mr. Matthews also explained that he told all employees that they did not get a union steward immediately but could speak to one within two to three days. The evidence does not support that the employing establishment acted unreasonably. Mr. Crandall explained why appellant was issued a suspension letter and Mr. Matthews explained that it was customary for all employees to not have access to a union steward immediately. While the disciplinary action was later rescinded pursuant to a January 22, 2010 dispute joint-resolution decision, the mere

[17] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[18] *Karen K. Levene*, 54 ECAB 671, 673 (2003); *Hasty P. Foreman*, 54 ECAB 427 (2003).

[19] *Richard J. Dube*, 42 ECAB 916, 921 (1991); *P.S.*, Docket No. 11-177 (issued August 9, 2011).

fact that disciplinary actions taken by the employing establishment were subsequently reduced or rescinded does not establish that it acted in an abusive manner towards the employee.[20] Appellant has not submitted any evidence demonstrating that the employing establishment committed error or abuse with respect to these matters. Therefore, he has failed to establish a compensable factor of employment.

On appeal, appellant alleges that his supervisors created a hostile situation where they contradicted and distorted the facts, harassed and demeaned him and called him crazy. He further requested that the Board examine the medical evidence, which demonstrated that he was diagnosed with work performance and occupational stress. The evidence of record, however, is insufficient to support appellant's allegations. The only statements appellant provided to support his claim were an April 12, 2010 letter from Mr. Destouche and an April 27, 2010 e-mail from Mr. Montuori. The Board notes that neither individual witnessed any of the alleged incidents or events, but merely related what appellant had told them. The Board finds that appellant has failed to submit sufficient evidence to establish that his supervisors and management engaged in harassment as alleged and that the administrative and personnel actions taken by management were in error. As appellant has not established a compensable factor of employment, the Board is under no obligation to analyze the medical evidence.[21]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision and before review under section 8128(a), to a hearing on his claim before a representative of the Secretary.[22]

OWCP regulations further provide that a claimant can choose between two types of hearings: an oral hearing or a review of the written record.[23] 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.[24] 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.[25] 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 and before the claimant has requested

[20] *See Linda K. Mitchell*, 54 ECAB 748 (2003); *S.R.*, Docket No. 10-2159 (issued July 20, 2011).

[21] *See Dennis J. Balogh*, *supra* note 9.

[22] 5 U.S.C. § 8124(b)(1).

[23] 20 C.F.R. § 10.615.

[24] *Id.* at § 10.616(a).

[25] *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

reconsideration.[26] However, if the request is not timely filed or when reconsideration has previously been requested, OWCP must exercise its discretion to grant or deny a request that is made after this 30-day period.[27] In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.[28]

ANALYSIS -- ISSUE 2

On September 20, 2010 OWCP denied appellant's emotional condition claim. Appellant's request for an oral hearing before OWCP's hearing representative was postmarked on October 21, 2010. The date of his hearing request is determined by the date of the postmark.[29] As appellant's October 21, 2010 hearing request was made more than 30 days after the date of OWCP's September 20, 2010 decision, he was not entitled to a hearing as a matter of right.

OWCP, however, has the discretionary authority to grant a hearing if the request was not timely filed. In its November 4, 2010 decision, it considered the issue involved and properly exercised its discretion when it denied appellant's hearing request and determined that he could equally well address his emotional condition claim by requesting reconsideration and submitting new evidence. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[30] In the present case, OWCP did not abuse its discretion in denying a discretionary hearing and properly denied appellant's request for an oral hearing under section 8124 of FECA.[31]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty. The Board also finds that OWCP properly denied appellant's request for an oral hearing as untimely.

[26] *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

[27] *See also Herbert C. Holley*, 33 ECAB 140 (1981); *G.W.*, Docket No. 10-782 (issued April 23, 2010).

[28] *Id.; see also Rudolph Bermann*, 26 ECAB 354 (1975).

[29] 20 C.F.R. § 10.616(a); *N.M.*, 59 ECAB 511 (2008).

[30] *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

[31] *See Herbert Jones, Jr.*, 57 ECAB 467 (2006); *D.F.*, Docket No. 11-42 (issued August 1, 2011).

ORDER

IT IS HEREBY ORDERED THAT the November 4 and September 20, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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