

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JOAN N. SIMMONS and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Pittsburgh, PA

*Docket No. 99-1300; Submitted on the Record;  
Issued January 22, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty causally related to compensable factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs' hearing representative properly denied appellant's request for subpoenas.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated December 18, 1998, that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that the Office hearing representative properly denied appellant's request for subpoenas.

Section 8126 of the Federal Employees' Compensation Act<sup>1</sup> states, "The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may (1) issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles." This section of the Act gives the Office discretion to grant or reject requests for subpoenas. The Office's regulation on subpoenas states, in part, "When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses."<sup>2</sup> The regulation further requires that a claimant who desires the issuance of a subpoena designate the witnesses to be produced and state the pertinent facts to be established by the witnesses and whether such facts could be established by other evidence without the use of a subpoena.

---

<sup>1</sup> 5 U.S.C. § 8126.

<sup>2</sup> 20 C.F.R. § 10.134(a).

By letter dated July 7, 1998, appellant stated that she had many witnesses and, if necessary, would much appreciate it if they could be subpoenaed. Appellant stated that she felt many of her witnesses might not come forward for fear of retaliation by the employing establishment. In a decision dated July 21, 1998, the Office hearing representative denied appellant's request for subpoenas, noting that appellant failed to clearly identify any witnesses or state the facts she expected to establish through their testimony.

As the only limitation on the Office's authority is reasonableness, to establish that the Office abused its discretion, appellant must show manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from known facts.<sup>3</sup> The Board finds no abuse of discretion in the finding of the Office hearing representative that appellant had failed to show that issuance of the requested subpoenas was necessary for a full presentation of the case.

The decisions of the Office of Workers' Compensation Programs dated December 18 and July 21, 1998 are hereby affirmed.

Dated, Washington, DC  
January 22, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>3</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).