U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CASSANDRA BAKER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Philadelphia, PA

Docket No. 03-1907; Submitted on the Record;
Issued September 23, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant established that she sustained an injury in the performance of duty on November 8, 2002; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely.

On November 8, 2002 appellant, then a 35-year-old mail processor, filed a traumatic injury claim alleging that on that day she was threatened by a coworker and began to fear for her safety. On the reverse side of the claim form, the employing establishment noted that appellant's coworker, Mr. Epps, denied making any threats to her and appellant's witness, Nora Abrams, stated that she never heard any threats.

A November 13, 2002 duty status report (Form CA-17) indicated that appellant was unable to perform her duties due to post-traumatic stress caused by a November 8, 2002 threat appellant received at work from a coworker.

In a report dated November 19, 2002, Dr. Abhay J. Dhond, Board-certified in internal medicine, stated that appellant was seen in the hospital clinic on November 12 and 19, 2002 and that she was placed on sick leave until further notice because of her stress, anxiety and depression.

By letter dated February 21, 2003, the Office requested additional factual and medical information from appellant.

In response to the Office's February 21, 2003 request, appellant stated that she was threatened by a coworker on Friday, November 8, 2002, while she was loading mail onto a machine. She added that before the coworker threatened her he was speaking to her in a "very uncomfortable tone," which she considered yelling. When she was threatened she began to shake and cry and became afraid and immediately sought assistance from the union representative and appellant's supervisor. After meeting with them, she reported to the medical unit for treatment.

In a March 21, 2003 decision, the Office denied appellant's claim finding that she failed to establish that she sustained an injury.

In a letter postmarked April 22, 2003, appellant requested an oral hearing.

By decision dated May 29, 2003, the Office denied appellant's request for an oral hearing as untimely.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on November 8, 2002.

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[1] The second component is whether the employment incident caused a personal injury.[2] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[3]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.[4] An employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[6] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7]

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[1] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *John J. Carlone*, 41 ECAB 354 (1989).

[3] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Id.*

[4] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[5] *Tia L. Love*, 40 ECAB 586, 590 (1989).

[6] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987).

[7] *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

In this case, appellant alleged that she was threatened by a coworker while she was standing by a mail machine on November 8, 2002. However, there were no witnesses who could confirm that appellant was threatened, or that a coworker spoke to her in a loud voice. The employing establishment noted that appellant's witness stated that "she never heard any threats." Further, the coworker denied having made any threats. In her statement, appellant noted that she had no relationship with the coworker outside of the workplace. She also noted that she did not know why the alleged harasser spoke to her in the manner alleged. Although appellant sought the assistance of her union representative and her supervisor, neither offered statements regarding the incident that would support appellant's allegation. Indeed, appellant's statement itself lacks any such detail regarding what the coworker said and why he said it, or what activity was occurring when the alleged incident occurred. She also failed to indicate what the threat was or what words or gestures were used to convey a threat. Appellant merely stated that she was frightened, started to shake and cry, but offered no explanation as to why she felt that way. The medical evidence also noted that appellant was treated for several days after the incident for stress, anxiety and depression. However, none of the reports provide any detail or description of the alleged incident that would support appellant's claim. Although the Board attributes great probative value to an employee's statement regarding an incident, a mere statement such as is the case here is not enough to establish that an incident occurred. Appellant presented no witnesses and did not indicate what was said that was threatening. The only witness as noted by the employing establishment stated that she did not hear threats made. Given the totality of the facts presented, the Board finds that appellant failed to establish that the incident occurred. As appellant has failed to establish any compensable factors of her federal employment, the medical evidence need not be considered.[8]

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

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. 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 a hearing is sought. 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 a hearing is sought.[9] However, the Office has discretion to grant or deny a request that was made after this 30-day period.[10] 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.[11]

Appellant's request for an oral hearing was postmarked April 22, 2003, which is more than 30 days after the Office's March 21, 2003 decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review, and correctly advised appellant that the issue of whether she sustained an injury as

[8] *Barbara J. Latham*, 53 ECAB __ (Docket No. 99-517, issued January 31, 2002).

[9] 20 C.F.R. § 10.616(a) (1999).

[10] *Herbert C. Holley*, 33 ECAB 140 (1981).

[11] *Rudolph Bermann*, 26 ECAB 354 (1975).

alleged was equally well be addressed by requesting reconsideration.[12] Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

The decisions of the Office of Workers' Compensation Programs dated May 29 and March 21, 2003 are hereby affirmed.

Dated, Washington, DC
September 23, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[12] The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).