United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket Nos. 07-812, 07-1629 & 07- 2302**
INTERNAL REVENUE SERVICE, POSTAL SERVICE, Atlanta, GA, Employer	)	**Issued: November 19, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' July 18 and September 12, 2006 decisions that denied his claims for an emotional condition on March 7 and August 21, 2006. This was docketed as appeal No. 07-2302. Appellant also appealed the Office's January 17, 2007 decisions denying his requests for a hearing. This was docketed as appeal No. 07-812. On May 30, 2007 appellant filed a timely appeal of a May 14, 2007 Office decision denying his claim for an emotional condition on March 1, 2006. This was docketed as appeal No. 07-1629. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's requests for a hearing.

FACTUAL HISTORY

On March 16, 2006 appellant, then a 60-year-old internal revenue agent, filed a traumatic injury claim for an emotional condition he sustained on March 1, 2006. He alleged that, when he

returned to his work site at 3:05 p.m., another employee "proceeded to very aggressively harass, intimidate and provoke me into a serious verbal [altercation]. The employee was very hostile." Appellant stopped work on March 3, 2006. The employing establishment controverted the claim. David Carter, a team manager, stated that he saw no evidence that a serious verbal altercation actually occurred and that he had no way to confirm appellant's allegation. Mr. Carter noted that the other employee provided a statement that appellant was at fault and exaggerated the incident. He noted that appellant did not seek medical attention for over a week and, on the day after the alleged incident, he worked a full shift and overtime.[1]

Appellant submitted a March 2, 2006 e-mail to Mr. Carter alleging that, on March 1, 2006, he returned to an audit site after a meeting, and was surprised that his coworker, Stuart Karpel, had also returned. He alleged that Mr. Karpel "proceeded to aggressively inquire" why he returned to the audit site rather than going home. Appellant noted informing Mr. Karpel that he had several things to do but that Mr. Karpel began to badger him and mumbled some remarks that he could not decipher. He worked at his computer for about one half hour "with no dialogue from Stuart." Appellant alleged that he completed his work and was preparing to leave when Mr. Karpel aggressively challenged his decision to return to the audit site, alleging that "[he] would not let me leave in peace, but forced me into a verbal altercation." He informed Mr. Karpel that he did not appreciate his "harassing and badgering." Appellant stated that, about 30 minutes later, Mr. Karpel called him on his cell phone and apologized. He told Mr. Karpel not to worry about it but "he doubted that he was sincere" as this was the third or fourth time that Mr. Karpel had sought to draw him into a verbal altercation about returning to the audit site. Appellant stated that he had worked with Mr. Karpel for about two years and had tolerated his attitude, behavior and harassment. In a March 5, 2006 e-mail to Mr. Carter, appellant advised that he was filing a complaint against Mr. Karpel about the March 1, 2006 incident. Appellant also informed Mr. Carter that he would take sick leave until their meeting. In a March 5, 2006 memorandum, he alleged that Mr. Karpel "intentionally pushed [him] to the point of retaliation by his second attack as [he] was trying to leave the audit site in peace." Appellant stated that he did not feel safe at the audit site alone with Mr. Karpel, requested no further contact with Mr. Karpel and asked that someone be in the audit room at all times when they were together.

In memoranda dated March 7, 2006, appellant described meeting with Mr. Carter and Keith Hughes, the senior team coordinator, regarding the March 1, 2006 incident. He noted being questioned about his practice of returning to the audit site and of Mr. Karpel's concern that he was returning for mileage purposes. Appellant was surprised that a team member was discussing his business practices and requested that management ask him to stop. He also requested no further contact with Mr. Karpel. Appellant alleged that, after the meeting, Mr. Karpel loudly asked him, "how are you feeling today?" to which he responded "no comment." He stated that afterwards, Mr. Karpel called out loudly "[Appellant], do you recall your computer refreshment?" Appellant noted responding that he was "busy right now." He stated that, after he went to lunch with Mr. Hughes, he felt intimidated that Mr. Karpel was back and he left to go to his doctor. In a March 14, 2006 memorandum regarding his March 7, 2006 meeting with Mr. Carter and Mr. Hughes, appellant indicated that he was called "Stuart" by

[1] File No. 062161011. The record reflects that appellant retired on October 14, 2006.

Mr. Carter on at least eight or ten occasions. He questioned whether this was harassment. Appellant also noted receiving an e-mail addressed to Stuart.

On March 16, 2006 appellant filed a second traumatic injury claim for an injury on March 7, 2006 related to his meeting with Mr. Carter.[2] He alleged that Mr. Carter aggravated his anxiety by "intentionally forcing him to go back to the site of a traumatic event" where "only days before" Mr. Karpel caused an "explosive harassment environment." On March 20, 2006 appellant described an incident between Mr. Karpel and Tom Cassell (another employee) which he alleged occurred a year prior. He alleged that Mr. Karpel angrily shouted at Mr. Cassell and threatened him about the volume of the radio. In light of this, appellant stated that he was in fear that Mr. Karpel would attack him. He stated that he had a preexisting anxiety condition and had to seek psychiatric treatment for a prior work depression. In a letter dated March 15, 2006 to his physician, appellant alleged that the incident had caused flashbacks to work-related incidents in 2002 involving a threat of physical harm and a high profile tax case which required psychiatric treatment.

In memoranda dated March 23, and April 19, 2006, Mr. Carter addressed a March 2, 2006 e-mail from appellant describing the March 1, 2006 incident with Mr. Karpel. In response, he set up a meeting with appellant for Tuesday, March 7, 2006, to discuss the incident. Mr. Carter received a second e-mail from appellant on March 5, 2006; however, he did not realize that appellant had sent the e-mail until he met with him on Tuesday morning. Mr. Carter met with appellant and the audit case senior team coordinator, Mr. Hughes, to conduct fact finding. At the end of the meeting, he informed appellant that he would also meet with Mr. Karpel before taking action. Mr. Carter instructed appellant to return to the audit site, where he worked for the previous two years, and not to talk with Mr. Karpel about the incident. He also noted that Mr. Hughes was to ensure that he was on site at all times when both appellant and Mr. Karpel were present. Mr. Carter subsequently met with Mr. Karpel. He noted that, when appellant returned to the audit site, Mr. Karpel asked him how he was doing because he knew that appellant had been sick the previous day. Mr. Hughes informed him that Mr. Karpel "was very concerned and did not harass [appellant]." Mr. Carter also indicated that Mr. Hughes felt that appellant was not truthful about the incident. He denied that he attempted to persuade appellant to return to the audit site, but honored appellant's requests that he have no further contact with Mr. Karpel. Mr. Carter directed that someone be in the audit room at all times when appellant and Mr. Karpel were in the room. He stated that appellant knew he would be back on the audit site as he specifically requested that someone be in the audit room when Mr. Karpel was present.

On April 13, 2006 the Office informed appellant of the evidence needed to support his March 1 and 7, 2006 claims.

On May 1, 2006 appellant alleged that on March 1, 2006 Mr. Karpel advanced towards him stomping his feet. He alleged that Mr. Karpel "had never before acted in the vicious way that he did on March 1, 2006." Appellant stated that he felt betrayed that Mr. Carter discussed his work habits with Mr. Karpel. He denied any outside stressors and noted that a prior work-

[2] File No. 062161016.

related incident involving an emotional reaction to a high profile trial was of short duration. Appellant alleged that he was repeatedly interrupted when responding to Mr. Carter's questions and was placed on the "hot seat." He became upset during the meeting due to Mr. Carter's "intentional interruptions." Appellant became upset when he was informed that Mr. Karpel had to "physically assault" him before Mr. Carter could take action. He alleged that Mr. Carter had his "own agenda" and "ignored" appellant when he was directed to return to the audit site. Appellant further alleged that he was injured because the meeting was held at 6:00 a.m. with no consideration for his condition, that he was deceived about the purpose of the meeting, that he was not properly advised about union representation, that Mr. Carter had not read his e-mail and that his remedy of no future contact was denied.

By decision dated July 18, 2006, the Office denied the March 1, 2006 claim, finding that the claimed events did not occur in the performance of duty. In a separate July 18, 2006 decision, the Office denied the March 7, 2006 claim, finding that the claimed events did not occur in the performance of duty.

By letter dated August 16, 2006, an Office district director advised appellant of the process for pursuing his claim. She informed appellant that specific information pertaining to claims examiners and their personnel files could not be released as it was protected under the Privacy Act.

On August 28, 2006 appellant filed a claim for a traumatic injury on August 21, 2006,[3] alleging that the Office's August 16, 2006 letter caused him stomach discomfort, depression, and physiological problems and a severe migraine headache.

By decision dated September 12, 2006, the Office denied appellant's claim for an injury on August 21, 2006. The Office found that the evidence did not establish that he was injured in the performance of duty.

In a separate decision also dated September 12, 2006, the Office vacated the July l8, 2006 decision regarding the March 1, 2006 injury claim. The Office found that the employing establishment was not afforded an opportunity to comment on appellant's allegations. On September 12, 2006 the Office requested that the employing establishment provide comments from a knowledgeable supervisor and the findings of any investigation.

The employing establishment submitted a March 8, 2006 memorandum from Mr. Karpel who alleged that he had a good working relationship with appellant and there was never any indication from appellant that his actions caused any difficulty. They both attended a meeting on March 1, 2006 and, afterwards, he returned to the audit site at about 3:00 p.m., noting that his workday ended at 4:45 p.m. About 10 to 15 minutes later, appellant arrived and Mr. Karpel was surprised to see him since his end time was 2:30 p.m. Mr. Karpel said hello and asked appellant why he had returned "so late in the day." He stated that he was "just making conversation" and that he was also "curious and alarmed if something was wrong, knowing that he would be leaving again in a few minutes." After appellant did not respond, Mr. Karpel asked him again as he thought appellant may not have heard him. At this point appellant "lashed out" in a "most

[3] File No. 062172194.

demonstrative and threatening tone with his voice considerably elevated" saying "it's none of your business and the manager told me to come into the office." Mr. Karpel felt quite stunned and vulnerable by appellant's tone and aggressive demeanor. He noted that appellant left at about 3:30 p.m. Mr. Karpel stated that, afterwards, a private company called him asking if a form could be picked up. He indicated that he was not aware of a pending submission and, after looking around, noticed that appellant had prepared several unsigned documents. Mr. Karpel attempted to reach appellant to confirm the submission, and after obtaining his cell number from Mr. Hughes, reached appellant at approximately 3:57 p.m. He began the conversation by saying that he was sorry appellant had become so upset and that, if he had a problem, they should talk about it. Mr. Karpel alleged that appellant responded that "the incident was forgotten and we could move on." He explained why he called and appellant confirmed that two copies of the form should be given to the taxpayer. Mr. Karpel did not realize that there was a problem with appellant's reaction to the incident until Mr. Carter handed him a note on March 7, 2006 requesting a meeting. He stated that during the March 7, 2006 meeting he was "dumbfounded that the incident had reached such unbelievable proportions."

In an October 5, 2006 memorandum, Mr. Carter advised that there were no witnesses to the March 1, 2006 incident. He contended that appellant exaggerated the incident and that the conversation was not a verbal altercation as appellant's actions immediately afterward were not consistent with a traumatic event. Mr. Carter noted that, on March 1, 2006, appellant e-mailed him at 5:24 p.m. stating that he was going to work at home the next day and made no mention of the alleged incident. Appellant's March 2, 2006 e-mail to him only indicated that a verbal altercation had occurred but made no mention of any physical attack. Mr. Carter denied that appellant had previously informed him of any concerns about Mr. Karpel and that the previous team coordinator had advised him that appellant and Mr. Karpel got along extremely well. Appellant's former manager, Don Arden, was also unaware of any problems. Mr. Carter noted that other employing establishment managers that he interviewed were unaware of problems between appellant and Mr. Karpel. He noted that Mr. Karpel had helped appellant on many occasions with his work. Mr. Carter noted that appellant filed a claim on January 9, 2002 alleging stress from his work on a high profile case.[4] He stated that no action was taken related to the findings and outcome of any investigations related to appellant's allegations.

On October 13, 2006 appellant requested a hearing in response to the July 18, 2006 decision denying his claim for an injury on March 7, 2006. In a separate letter dated October 13, 2006, he requested a hearing in response to the September 12, 2006 decision denying his claim for an injury on August 21, 2006.

By decision dated October 27, 2006, the Office denied appellant's claim for an injury on March 1, 2006 finding that the evidence submitted was insufficient to establish that the events occurred as alleged.

On November 9, 2006 appellant requested a hearing related to the October 27, 2006 decision, which was scheduled for March 14, 2007. He subsequently requested a review of the written record.

[4] Appellant included copies of the claim filed in 2002 under File No. 06-2031440. The Board notes that this claim is not presently before the Board.

By decisions dated January 17, 2007, the Office found that appellant was not entitled to a hearing as to the July 18 and September 12, 2006 decisions. It found that his request was not made within 30 days of the issuance of the July 18 and September 12, 2006 decisions. The Office further considered the matter but determined that it would not grant a hearing as the issue in the case could equally well be addressed by requesting reconsideration.

On March 13, 2007 appellant provided an excerpt from his Equal Employment Opportunity claim based on age discrimination. He alleged that he was subjected to harassment based on his age in the March 7, 2006 meeting. Appellant repeated his allegations. He alleged that his manager failed to provide him with a complete copy of his Form CA-1; failed to interview requested witnesses; that he was questioned by management regarding his use of sick leave and retirement; that management reduced his ability to work flexiplace to one day per week; that management contacted him on February 28 and November 28, 2006 at home to request information that had already been made available; that management failed to assist him in completing his workers' compensation claim on March 9, 2006 and that management failed to investigate false statements made by a coworker as well as an altercation that had been initiated by the same coworker. Appellant asserted that Mr. Carter's statements were misleading and retaliatory.

In a memorandum dated April 18, 2007, Mr. Carter noted that appellant's EEO complaint remained in process and that his allegations were not established.

On April 25, 2007 appellant alleged that Mr. Carter's statements to the EEO investigator were contradictory. He provided a copy of an April 17, 2007 letter sent to Tracey Banks, Branch Manager at the employing establishment, regarding his EEO complaint, copies of e-mail correspondence sent to Mr. Carter regarding his claim and numerous comments to statements made by Mr. Carter, Mr. Cassell and other supervisors.

In a May 14, 2007 decision, the Office hearing representative affirmed the Office's October 27, 2006 decision which denied his claim for an injury on March 1, 2006.

LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[5] 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.[6]

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

Appellant 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 employment factors.[7] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[8]

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 the physician when 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, 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 the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[10]

ANALYSIS -- ISSUE 1

Appellant filed separate claims alleging that he sustained an emotional condition due to incidents of March 1 and 7 and August 16, 2006. The Board must, thus, initially review whether the alleged incidents are compensable under the terms of the Act.

Appellant alleged that harassment and discrimination on the part of his supervisors and coworkers contributed to his claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[11] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[12] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[13]

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[7] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[8] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

[10] *Id.*

[11] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[12] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[13] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

Appellant alleged that he was harassed by Mr. Karpel on March 1, 2006. However, he provided no corroborating evidence, such as witness statements, to establish that the statements and actions occurred as alleged.[14] Appellant asserted that Mr. Karpel harassed him "aggressively" questioning why he returned to the worksite, that Mr. Karpel sought to physically intimidate him and sought to lure him into a verbal altercation. However, Mr. Carter advised that he found no evidence that a serious verbal altercation occurred and that he had no way to confirm whether the allegations were true. Mr. Karpel denied that he had harassed or intimidated appellant and noted that they previously had a good working relationship. He explained why he asked appellant about returning to the work site on March 1, 2006, and denied harassing appellant. As noted, perceptions of harassment are not compensable. While appellant alleged that he was harassed on March 1, 2006, Mr. Karpel denied the allegations and provided a reasonable explanation for his actions. Mr. Carter, the supervisor, explained that he was unable to corroborate appellant's allegations despite investigating the matter after it was brought to his attention. The Board finds that the evidence does not establish that the alleged harassment of March 1, 2006 occurred as alleged.

To the extent that appellant alleged that a verbal altercation occurred with Mr. Karpel, the Board has recognized the compensability of verbal altercations or abuse in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[15] Appellant has not submitted sufficient evidence to establish that the alleged statements actually were made or that the actions actually occurred such that it would rise to the level of a compensable employment factor.

Appellant also alleged that he was harassed by Mr. Carter during the March 7, 2006 meeting. He alleged that his supervisor forced him to go back to his work site and repeatedly called him "Stuart" during the meeting. The Board finds that appellant has not established a compensable employment factor. Mr. Carter denied that he harassed appellant and explained that he called the meeting in response to appellant's allegations of March 1, 2006. Appellant has not established that his supervisor harassed him. He did not provide any statements from witnesses and the allegations were denied by Mr. Carter. Appellant's allegations are not substantiated. Mere perceptions of harassment or discrimination are not compensable.[16]

Appellant stated that he was not satisfied with management's method of conducting the fact finding meeting or his allegations regarding the March 1, 2006 alleged incident. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken.[17] The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[15] *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

[16] *C.S.*, 58 ECAB ___ (Docket No. 06-1583, issued November 6, 2006).

[17] *Id.*

duties are not considered to be employment factors.[18] The Board has also found that 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. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[19] Although appellant alleged that erred and acted abusively in conducting the investigation, he has not provided sufficient evidence to support his claim. The evidence does not show that Mr. Carter's actions in investigating the March 1, 2006 incident were unreasonable. While appellant submitted documents pertaining to an EEO matter, there is no evidence of any findings by another agency that would be factually relevant in supporting appellant's allegations relative to the traumatic injury claims filed by appellant.[20] As noted, appellant provided no corroborating evidence, such as witness statements, to support that the employing establishment acted unreasonably. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Regarding appellant's allegation that he sustained an emotional condition on August 21, 2006 as a result of receiving a letter from the Office, this is not a compensable employment factor. The Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.[21]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[22]

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Federal Employees' Compensation 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 an Office final decision.[23] Section 10.615 of the Office's regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."[24]

[18] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[19] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[20] *See Peter D. Butt Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[21] *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

[22] 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).

[23] 5 U.S.C. § 8124(b)(1).

[24] 20 C.F.R. § 10.615.

Section 10.616(a) of the Office's regulations provides that a claimant who has received a final adverse decision by the 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."[25] The Office's regulations provide that a request received more than 30 days after the Office's decision is subject to the Office's discretion[26] and the Board has held that the Office must exercise this discretion when a hearing request is untimely.[27]

ANALYSIS -- ISSUE 2

Appellant made two separate requests for a hearing. They were both dated and postmarked October 13, 2006. The Board notes that the requests for a hearing were more than 30 days after the Office issued its July 18, 2006 decision, and also more than 30 days after the Office issued its September 12, 2006 decision. Appellant was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion in denying a hearing upon appellant's untimely requests by determining that the issues could be equally well addressed by requesting reconsideration and submitting new evidence. The only limitation on the Office's authority is reasonableness. 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 deductions from known facts.[28] There is no evidence of record that the Office abused its discretion in denying appellant's requests for a hearing.

CONCLUSION

For the foregoing reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty. The Board also finds that the Office properly denied appellant's requests for a hearing.

[25] 20 C.F.R. § 10.616(a).

[26] 20 C.F.R. § 10.616(b).

[27] *Samuel R. Johnson*, 51 ECAB 612 (2000).

[28] *See Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT decisions of the Office of Workers' Compensation Programs dated May 14 and January 17, 2007 and September 12 and July 18, 2006 are affirmed.

Issued: November 19, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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