

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

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**A.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Indianapolis, IN, Employer**

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**Docket No. 07-1560  
Issued: November 21, 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 May 21, 2007 appellant filed a timely appeal from the May 4, 2007 merit decision of the Office of Workers' Compensation Programs' hearing representative, who affirmed the denial of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

**ISSUES**

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied his request for subpoenas.

**FACTUAL HISTORY**

On December 5, 2005 appellant, then a 61-year-old former processing clerk, filed a claim alleging that he developed major depression due to work stressors over the years. He alleged that in April 2001 he saw two employees putting good postage-due mail in the trash, mail that should have been charged or billed. Appellant contended that this amounted to throwing away over \$100,000.00 of postal revenue, but management stated it was okay. When he told postal

inspectors that he was so mad he could call the customers, inspectors told him, "Go ahead." Appellant did and management came after him. He stated that he started being depressed because nothing was done. After a fitness-for-duty examination found appellant totally incapacitated, the employing establishment placed him on enforced leave for six months. He stated that he fell into a major depression. In 2005 appellant stated that he confirmed that it was taking four days to work priority mail. He reported this to the Office of Inspector General (OIG), but management, OIG and the postal inspectors "made up stories without any evidence to remove me from the [employing establishment]." Appellant was terminated for misconduct on October 7, 2005.

Appellant's supervisor, Mary Glasser Bichaukas, offered a statement explaining the circumstances of what happened and denied wrongdoing by management. Ms. Bichaukas stated: "Never once in all the years that [appellant] worked for me did he say that the [employing establishment] or his job was causing him stress. Only after he was terminated, did he try to blame the [employing establishment]." A February 22, 2006 decision from the Merit Systems Protection Board (MSPB) affirmed appellant's removal.

In a decision dated August 21, 2006, the Office denied appellant's claim. The Office found appellant's claim untimely with respect to events in 2001, when he alleged postage-due mail was being put in the trash and with respect to events in 2002, when he was placed on enforced leave. The Office found that appellant's termination in 2005 was not compensable, as there was no evidence of error or abuse on the part of the employing establishment. The Office also found no evidence to support retaliatory action concerning appellant's reporting of delay in priority mail delivery.

Appellant requested an oral hearing before an Office hearing representative and requested that certain postal employees appear to testify. On February 21, 2007 the hearing representative denied this request for subpoenas on the grounds that appellant did not adequately explain how their testimony was directly relevant and why there were no other means by which the evidence could be obtained. At the hearing, which was held on March 7, 2007, appellant appeared and testified on his own behalf.

In a decision dated May 4, 2007, the hearing representative found that appellant's December 2005 occupational disease claim was timely with respect to incidents beginning in April 2001, as he filed his claim three months after his termination, the date of his last possible injurious exposure. The hearing representative found, however, that appellant failed to establish a compensable factor of employment. Although appellant claimed wrongdoing on the part of the employing establishment, the hearing representative found that the evidence failed to support his allegations. The hearing representative incorporated the reasons for his denial of subpoenas.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>1</sup>

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<sup>1</sup> 5 U.S.C. § 8102(a).

However, workers' compensation does not cover each and every injury or illness that is somehow related to employment.<sup>2</sup> An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.<sup>3</sup> Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

Appellant attributed his emotional condition to the way in which management responded to his report of mail mishandling and to the administrative and disciplinary actions directed towards him.<sup>5</sup> He became depressed because nothing was done and he fell into a major depression after being placed on enforced leave for six months. Eventually, after reporting delays in working priority mail, he was terminated for misconduct. While these matters are connected to employment, without proof that management committed error or abuse, appellant may not receive benefits under the Act. The record contains no proof. Appellant's allegations are unsupported by substantial credible evidence, particularly with respect to his removal, which the MSPB affirmed. He has rested his case solely on his allegations of impropriety and unfair treatment, which the employing establishment denied. Without evidence establishing the employing establishment committed error or abuse, appellant has discharged his burden to establish entitlement to workers' compensation. The Board will affirm the denial of his claim for benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8126 of the Act provides that the Secretary of Labor, on any matter within her jurisdiction under this subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.<sup>6</sup> Office regulations provide as follows:

“A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>4</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>5</sup> Any reaction appellant had to the manner in which other employees performed their duties is not compensable.

<sup>6</sup> 5 U.S.C. § 8126(1).

cannot be obtained by other means and for witnesses only where oral testimony is the best way to ascertain the facts.”<sup>7</sup>

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 deductions from established facts and similar criteria. It is not enough to show merely that the evidence could be construed so as to produce a contrary factual conclusion.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

The Office hearing representative denied appellant’s effective request for subpoenas on the grounds that he did not adequately explain how the testimony of these individuals was directly relevant and why there were no other means by which this evidence could be obtained. Because appellant did not establish that oral testimony was the best way to ascertain the facts, the Board finds no abuse of the hearing representative’s discretion in this matter.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty. Appellant submitted no proof that the employing establishment committed error or abuse in the actions directed towards him. The Board also finds that the Office hearing representative did not abuse his discretion in denying appellant’s request for subpoenas.

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<sup>7</sup> 20 C.F.R. § 10.619 (1999). A decision to deny a subpoena can be appealed only as part of an appeal of any adverse decision that results from the hearing. *Id.* § 10.619(c).

<sup>8</sup> *Dorothy Bernard*, 37 ECAB 124 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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