U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVEL J. WARREN and DEPARTMENT OF THE NAVY, NAVAL STATION, Long Beach, Calif.

Docket No. 97-205; Submitted on the Record;
Issued December 7, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen the record pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On August 28, 1992 appellant, then a retired 42-year-old computer programmer analyst, filed an occupational disease claim, alleging that beginning June 27, 1990 he sustained stress and major depression as a result of factors of his federal employment. Appellant resigned from his position January 31, 1992. As causative factors of his emotional condition claim, appellant identified the following: He was the victim of discrimination due to his race; he was forced to work in a hostile and unprofessional working environment; he was improperly rated unacceptable for job performance in 1990 and 1991; he was improperly denied a within-grade increase in July 1991; performance standards which did not reflect his position description were unilaterally issued in 1991 without appropriate discussion; the employing establishment improperly removed him from his position in November 1991; he was harassed by coworkers who sabotaged his work, vandalized his property, including his car, removed his parking sign, and removed security signs on computers while he was working on them; he was denied overtime that was necessary for the completion of his work and was not compensated for all hours of overtime he worked; he was denied sick leave and had to supply medical documentation for all leave used although he was not on leave restriction; he was forced to file grievances and Equal Employment Opportunity (EEO) complaints to protect his position and reputation and the EEO complaints were not acted on by the employing establishment in a timely manner; he was subjected to reprisal as a result of these actions; he was subjected to verbal abuse by coworkers and management; and was assaulted by a coworker, Mr Baker.

In a decision dated November 25, 1992, the Office denied appellant's claim on the grounds that claimed injury did not arise within the performance of duty as none of the identified factors were compensable under the Act. By decision dated December 16, 1993, an Office hearing representative affirmed the Office's November 25, 1992 decision. In a decision dated

August 18, 1994, the Office found that appellant's request for reconsideration was *prima facie* insufficient to warrant merit review. By merit decision dated January 30, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification. In decisions dated October 12, 1995 and February 14, 1996, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was repetitive, cumulative or irrelevant and was not sufficient to warrant modification or review of the prior decisions.[1]

The Board has carefully reviewed the entire case record on appeal and finds that the Office properly denied appellant's requests for reconsideration.[2]

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

In the present case, the Office found that none of the identified causative factors were compensable under the Act as appellant either failed to establish that the alleged incident occurred and therefore his response was self-generated or alleged incident was administrative in nature or related to a personnel matter and appellant failed to establish there was any error or abuse on the part of the employing establishment. With his October 2, 1995 request for reconsideration, appellant submitted a medical report dated January 20, 1992 which diagnosed appellant with major depression caused by psychotic features, a clinical case summary dated September 11, 1995 by Maureen Finkle, a social service representative, a statement dated July 10, 995 by Amador G. Saenz, a former deputy director in the employing establishment, and a decision dated March 8, 1995 from the Merit Systems Protection Board (MSPB) denying appellant's petition for enforcement of its March 6, 1992 decision on the grounds that there had

[1] While the Office mentioned modification in both decisions, a review of the decisions indicates that merit review was not performed. Rather, the Office performed a review of the submitted evidence in response to the requests for reconsideration and determined that the evidence was not sufficient to warrant merit review.

[2] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on October 1, 1996, the only decisions before the Board are the Office's February 14, 1996 and October 25, 1995 decisions. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] 20 C.F.R. § 10.138(b)(2).

[4] *Sandra F. Powell,* 45 ECAB 877 (1994); *Eugene F. Butler,* 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[5] *Dominic E. Coppo,* 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

been no breach of the settlement agreement by the employing establishment, The July 10, 1995 statement by Mr. Saenz is substantially the same as his December 9, 1994 statement which was previously considered by the Office in its January 30, 1995 merit decision. While Mr. Saenz has indicated in both statements that appellant was discriminated against due to his race, he failed to provide any specific incidents of harassment or discrimination and has not offered any objective evidence to substantiate his belief that appellant was the victim of discrimination. Thus, the Office properly found that the December 9, 1994 statement was not sufficient to provide a factual basis for appellant's contention that the employing establishment discriminated against him or committed error or abuse in the execution of administrative or personnel matters. Accordingly, the July 10, 1995 statement by Mr. Saenz which is similarly deficient to his earlier statement is cumulative in nature and is not sufficient to require merit review of the Office's prior decisions. The case summary provided by Ms. Finkle is also lacking in sufficient details to corroborate the causative factors identified by appellant. In addition, as Ms. Finkle has not identified herself as a licensed psychologist, she is not a physician within the meaning of the Act, and, therefore, her opinion does not constitute probative evidence.[6] The March 8, 1995 MSPB decision in which the agency found no wrongdoing on the part of the employing establishment also does not aid appellant in discharging his burden of proof. The MSPB decision does not corroborate in any capacity appellant's allegations of error or abuse by the employing establishment, thus it cannot provide a basis for reopening the record. Finally, the January 1992 medical report is also not sufficient to reopen the case record. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on the analysis of the medical evidence.[7] As Office did not determine that any of the identified factors were compensable under the Act, it did not reach a discussion of the medical evidence and the submitted report is therefore irrelevant at this time. The Office properly denied appellant's October 2, 1995 request for reconsideration.

With his January 29, 1996 request for reconsideration, appellant submitted a statement reiterating his belief that the previously identified factors were the cause of his diagnosed emotional conditions. Appellant also asserted that the "cold air and poor no ventilation" caused him to become ill with colds and influenza and that he was under pressure to complete deadlines. Appellant also submitted the following with his request for reconsideration: numerous memoranda which addressed the removal of his parking sign, his disagreement with his performance appraisal in 1990, policy and procedure concerning his use of leave and overtime requests, problems with communications to ships, and documentation of oral counseling provided to appellant, position descriptions for appellant's former position and for an information technology manager, an April 30, 1991 medical report of a psychiatric evaluation, a disability certificate for anxiety dated March 3, 1991, and leave slips for May 10 and September 16, 1991. The memoranda submitted by appellant are cumulative in nature as they address identified causative factors which had already been recognized by the Office and determined to not be compensable under the Act. The memoranda do not provide any additional information or substantiate error or abuse by the employing establishment. The position

[6] *Joseph N. Fassi*, 42 ECAB 677 (1991); *Betty G. Myrick*, 35 ECAB 922 (1984).

[7] *See Gregory J. Meisenburg*, 44 ECAB 527 (1993).

description for appellant's position is duplicative. The position description for the information technology manager is irrelevant as it is unrelated to the central issue in this case. The leave slips submitted by appellant in which he indicated that sick leave was used due to stress, harassment, extreme nervousness and fatigue do not constitute objective corroboration of the factors alleged. Rather, the leave slips merely indicate appellant's perceptions at the time and are cumulative in nature as they are similar to the statements of causative factors already considered by the Office. As previously noted, the submitted medical evidence is not probative in this case in which none of the identified factors were found compensable, and therefore the Office did not reach a discussion of the medical evidence. Finally, the additional causative factors of stress due to deadlines and colds and influenza due to cold temperatures in the workplace are not substantiated by the evidence of record. Furthermore, appellant has not explained how his physical health condition impacted on his claimed emotional condition. As all of the evidence submitted by appellant with his requests for reconsideration was either duplicative, cumulative or irrelevant, the Office did not abuse its discretion in refusing to reopen the record for merit review of appellant's claim.

The decisions of the Office of Workers' Compensation Programs dated February 14, 1996 and October 25, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 7, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member