U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN H. RAWLINS and U.S. POSTAL SERVICE,
LONG BEACH GENERAL MAIL FACILITY, Long Beach, Calif.

Docket No. 97-1294; Submitted on the Record;
Issued June 24, 1999

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion under section 8128(a) of the Federal Employees' Compensation Act by denying appellant's request to reopen the case for a merit review.

This is the second appeal before the Board in this case. Appellant initially filed a notice of occupational disease alleging that she sustained work-related stress on or before October 19, 1990. She alleged a pattern of discrimination, harassment and disciplinary actions by the employing establishment beginning in 1969, which she attributed in part to her interracial marriage to an African-American man. The Office denied appellant's claim by decision dated January 16, 1992 on the grounds that the employment factors alleged were unsupported, unfounded, or administrative in nature and, therefore, not covered under the Act. Appellant requested reconsideration by February 3, 1992 letter, submitting medical reports, witness statements, and copies of Equal Employment Opportunity (EEO) settlement agreements from 1987 to 1989. The Office denied modification by April 17, 1992 decision on the grounds that appellant submitted insufficient evidence to warrant modification of the January 16, 1992 decision. Appellant again requested reconsideration on April 15, 1993 submitting statements from coworkers, copies of EEO settlement agreements and a May 2, 1993 psychiatric report. By decision dated July 28, 1993, the Office denied reconsideration on the grounds that the evidence submitted was cumulative and repetitious and, therefore, insufficient to warrant a merit review. Appellant then appealed to the Board. By decision and order issued May 31, 1995,[1] the Board affirmed the Office's July 28, 1993 decision, finding that the Office had not abused its discretion under section 8128(a) of the Act by refusing to reopen appellant's claim for further consideration of the merits.[2] The law and facts of the case as set forth in the Board's decision and order are incorporated by reference.

---

[1] Docket No. 94-92.

[2] Following issuance of the July 28, 1993 decision, appellant submitted additional evidence, including

In a June 18, 1995 letter, appellant requested reconsideration, and enclosed an April 26, 1994 affidavit from Sandy Guerra, who worked at the employing establishment from 1984 to 1991 as a labor relations assistant and division labor representative at Equal Employment Opportunity Commission (EEOC) and union arbitrations. Ms. Guerra asserted that she was ordered to settle EEOC actions when settling an arbitration, thus an individual "in order to settle had to withdraw all other actions including EEOs." She stated that she was instructed by Mr. Raymond Aguillars, an EEO manager, not to settle any of appellant's grievances if she did not first withdraw her EEO complaint. "Mr. Aguillars stated he was sick and tired [of appellant] and offended that her reasons for the EEOs were retaliation for having married a black male." Ms. Guerra also recalled that supervisors Audrey Vance and Gloria Clark called and visited "in at least six actions" regarding appellant, stating that they wanted to "take actions to 'get [appellant] and make it stick.'" Ms. Clark "wanted to write actions that would stick and be able to go all the way to … get [appellant] discharged for cause." Ms. Guerra stated that the supervisors did not indicate they had "attempted to resolve any issues of interracial marriage … the supervisors just kept writing [appellant] up and trying to get rid of her. I was frustrated by the apparent personal conflict that existed between [appellant's] supervisors and their attempts to get her.… [T]he order not to settle any cases on [appellant] without making her waive her EEO issues was a violation of her rights."

By decision dated July 18, 1995, the Office denied reconsideration on the grounds that Ms. Guerra's statement was "irrelevant or immaterial," and, therefore, insufficient to warrant a merit review of the prior decisions. The Office found that Ms. Guerra's statement did not constitute a formal finding of error or abuse by the employing establishment and did not identify "compensable employment factors establishing a psychiatric condition."

Appellant subsequently filed an appeal with the Board, docketed as No. 96-128. The case record was transferred to the Board on October 24, 1996. By order remanding case issued November 4, 1996, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record. While the case was at the Office, the Office issued an additional decision.

By decision dated January 21, 1997, the Office again denied appellant's June 18, 1995 request for a merit review on the grounds that Ms. Guerra's April 26, 1994 statement, the only evidence submitted in support thereof was "of an immaterial nature" and, therefore, insufficient to warrant a review of the prior decision.[3]

---

correspondence between appellant's elected representatives and the Office. In an August 18, 1993 letter, Dr. Philip M. Carman, an attending clinical psychologist, opined that the Office erroneously characterized as repetitious the evidence appellant submitted on reconsideration. Dr. Carman then requested reconsideration. In a September 9, 1993 letter, the Office asserted that all evidence had been appropriately considered and that Dr. Carman did not have standing to request reconsideration on appellant's behalf.

[3] The attached memorandum to the Director is nearly an exact repetition of the memorandum accompanying the July 18, 1995 decision.

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of her claim by written request to the Office identifying the decision and specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law, or

"(ii) Advancing a point of law or fact not previously considered by the Office, or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[4]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[5] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Act.[6]

The critical issue in this case is whether appellant has established any compensable factors of employment, and submitted sufficient evidence establishing a causal relationship between those factors and her claimed emotional condition. Therefore, Ms. Guerra's April 26, 1994 affidavit must be evaluated as to whether it constitutes new, relevant and pertinent evidence on this issue.

Ms. Guerra's affidavit is insufficient to substantiate the employment incidents alleged by appellant. Ms. Guerra did not provide the dates relevant to any of the alleged conversations with appellant's supervisors or other personnel, or the pertinent dates or subject matter of any of the EEO complaints or union grievances. Thus, her statement is too general in nature to establish that the employing establishment harassed appellant or committed error or abuse regarding administrative matters. Also, although Ms. Guerra alleged she was instructed to violate appellant's rights, the statement does not substantiate that appellant's rights were, in fact, violated.

Thus, Ms. Guerra's statement does not establish any compensable factor of employment. Without such factors, the issue of causal relationship remains moot, as there is no covered element of employment to which to relate the claimed emotional condition. Also, Ms. Guerra's

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2).

[6] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

statement does not show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office. Therefore, it is insufficient to warrant reopening appellant's case for further review on the merits and the Office properly exercised its discretion in denying a merit review.

The decision of the Office of Workers' Compensation Programs dated January 21, 1997 is hereby affirmed.[7]

Dated, Washington, D.C.
June 24, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Accompanying her appeal, appellant enclosed additional evidence. The Board may not review evidence for the first time on appeal that was not before the Office at the time it issued its final decision in the case. 20 C.F.R. § 501.2(c).