

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNETTE W. JOLLY and U.S. POSTAL SERVICE,
POST OFFICE, Mobile, Ala.

*Docket No. 97-2730; Submitted on the Record;
Issued May 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's February 26, 1997 request for reconsideration.

In a decision dated February 26, 1996, the Office denied appellant's claim that she sustained an emotional condition while in the performance of duty. The Office found that the case could not be accepted because the factors to which appellant attributed her condition, involving actions of her supervisor, were not in the performance of duty. Appellant requested reconsideration on February 26, 1997. In a decision dated May 23, 1997, the Office denied appellant's request on the grounds that she presented no new and relevant medical evidence identifying any employment factors.

The Board finds that appellant is not entitled to a merit review of her claim.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹ 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 three criteria, the Office will deny the application for review without reviewing the merits of the claim.²

Appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. Accordingly, she may not obtain a merit review of her claim based on the first or second criteria

¹ 20 C.F.R. § 10.138(b)(1).

² *Id.* at § 10.138(b)(2).

set forth above. Appellant, instead, submitted numerous documents, including her own statement, the statements of others, reports from doctors and documents relating to a limited-duty position. Appellant submitted this evidence to show that her supervisor placed pressure on her, notwithstanding her doctor's assessment that appellant still exhibited a strong tendency to react to a pressure situation in an emotionally upsetting manner and that therefore it made sense to place appellant in a work setting in which pressure from supervisors was maintained at a minimum level. This evidence is tenuous, at best, and as the Office correctly noted in its May 23, 1997 decision, some of the evidence appellant submitted tends to support that she actually worked in a low-stress environment. Regardless, the Board finds that the evidence is irrelevant to the grounds upon which the Office denied her claim and is therefore insufficient to require the Office to conduct a merit review under the third criterion above.

The Office denied appellant's claim because an emotional reaction to the actions of a supervisor are generally not within the scope of coverage of the Federal Employees' Compensation Act.³ Accordingly, appellant may not obtain a merit review of her claim by submitting evidence that is intended show that the actions of her supervisor caused pressure. To establish that she is attributing her emotional condition to a compensable factor of employment, appellant must submit evidence of error or abuse or unreasonable conduct by her supervisor.⁴ Nothing appellant submitted tends to show error or abuse or unreasonable conduct. For this reason, the Board finds that the evidence is irrelevant and therefore insufficient to require the Office to conduct a merit review under the third criterion above.⁵

Because appellant's request for reconsideration failed to meet at least one of the three criteria for obtaining a merit review of her claim, the Board finds that the Office properly denied her request.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Margreate Lublin*, 44 ECAB 945 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979) (evidence that does not address the particular issue involved constitutes no basis for reopening a case).

The May 23, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member