U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINE CELAYA and U.S. POSTAL SERVICE,
STEINEN STREET STATION, San Francisco, CA

Docket No. 99-1959; Submitted on the Record;
Issued December 4, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On May 27, 1997 appellant, then a 33-year-old pool clerk, filed a claim for emotional stress and anxiety. She alleged that, on May 22, 1997, her acting supervisor, James Louie, subjected her to a verbal and physical assault. The employing establishment submitted a May 22, 1997 statement from Mr. Louie, who noted that he was handing appellant's leave slips and asked her to sign them. Appellant asked why there were four copies. He replied that the slips were for four separate occasions on three workdays. Mr. Louie noted appellant became upset, commenting as she signed that there was no difference between leave without pay and absent without leave. Appellant then began to tear up her copies of the leave slips and then reached for and started to tear the office copies of the leave slips. Mr. Louie put his hand on the office copies, pulled them away from appellant and asked what she was doing. Appellant responded by stating that Mr. Louie did not know what she could do to him. He then walked away from appellant.

In a July 22, 1997 decision, the Office rejected appellant's claim for compensation on the grounds that the evidence of record did not support that appellant's claim fell within the performance of duty.

In a July 30, 1997 letter, appellant requested a hearing before an Office hearing representative. At the February 28, 1998 hearing, she testified that on May 22, 1997, she had signed the leave slips and was tearing up duplicate copies when Mr. Louie spoke in a loud, demanding voice and forcibly grabbed her right wrist. Appellant stated that she was in a state of shock and asked him what he was doing. She related that Mr. Louie held her wrist for 5 to 10 seconds, cutting off her circulation. Appellant left work for that day immediately after the incident. A union representative testified that he had interviewed an eyewitness who stated that she saw the supervisor move appellant's arm with his hand. He indicated that he had then

interviewed Mr. Louie, who indicated that he had appellant sign the leave slips for being late to work or absent from work. Mr. Louie reported appellant tried to take the leave slips from the desk. Once she did that, he acted to protect postal documents by moving her arm. The union representative testified that Mr. Louie denied grabbing appellant's arm but only brushed against it. He noted, however, that Mr. Louie indicated that he walked away from appellant after she threatened him, leaving the documents behind on the desk. Appellant testified that, to her knowledge, the copies on the desk were duplicates but, when she took them and started to tear them, Mr. Louie grabbed her arm and claimed he was protecting the documents.

The employing establishment submitted a March 28, 1998 note from Mr. Louie who stated that he did not touch or grab appellant. He denied that he told the union representative that he grabbed appellant's arm. Mr. Louie stated that he grabbed the leave slips. He commented that, if he touched appellant during the interchange, he was not aware of it and the action was not deliberate.

In a May 8, 1998 decision, the Office hearing representative found that the evidence of record did not support appellant's claim that her supervisor grabbed her wrist and held it for 5 to 10 seconds. He found that it did show that appellant grabbed documents off the desk and began to tear them when the supervisor recovered them and, in the process, pushed appellant's hand away. The Office hearing representative indicated that the supervisor was engaged in appropriate supervisory action. He further found that there was no evidence of error or abuse in the actions of appellant's supervisor.

In May 7, 1999 letter, appellant filed a request for reconsideration. She submitted a copy of a December 1, 1998 settlement of a grievance filed concerning the May 22, 1997 incident. The settlement agreement indicated that, other than a handshake, supervisors were to avoid touching employees and inadvertent touching was to be acknowledged and an apology given.

In a May 14, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious, cumulative and immaterial in nature and, therefore, insufficient to warrant review of its prior decision.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the filing of an appeal.[1] In this case, appellant's appeal was filed on June 12, 1999. The Board, therefore, only has jurisdiction to consider the Office's May 14, 1999 decision.

The Board finds that Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), 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 relevant legal argument not previously considered by the Office or submitting relevant and pertinent evidence not previously considered

[1] 20 C.F.R. § 501.3(d).

by the Office. Section 10.608(a) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[2] 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.[3] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[4]

In this case, the only evidence submitted in support of appellant's request for reconsideration was the settlement agreement that arose out of the May 22, 1997 incident. The agreement indicates that supervisors were to avoid touching employees and to apologize for any inadvertent touching. The Office hearing representative found that the supervisor touched appellant in retaining the leave documents. The hearing representative concluded that the supervisor was acting in an appropriate administrative activity in retaining the documents. The settlement agreement provided a general statement that supervisors were to avoid touching employees except in handshakes and were to apologize for inadvertent touching. This general statement does not specifically support appellant's claim that her supervisor grabbed her in the May 22, 1997 incident, thereby precipitating her emotional condition. The settlement agreement therefore is immaterial and is not sufficient to require the Office to review appellant's claim on the merits.

[2] 20 C.F.R. § 10.608(a).

[3] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[4] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs, dated May 14, 1999, is hereby affirmed.

Dated, Washington, DC
December 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member