U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE SHEPARD and DEPARTMENT OF THE NAVY, NAVAL STATION, Mayport, FL

Docket No. 99-2500; Submitted on the Record;
Issued November 27, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, WILLIE T.C. THOMAS

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

On May 20, 1997 appellant, then a 41-year-old total quality leadership coordinator, filed a claim for recurrent temporal-mandibular joint syndrome, panic attacks and back and body pain. She attributed her conditions to problems in her job, such as not being given information needed to do her job. In accompanying and subsequent statements, appellant indicated that she believed she was promised a promotion in the position and was receiving positive notice for the performance of her job. She stated that, after she provided evidence in another employee's sexual harassment claim, the atmosphere of the employing establishment toward her seemed to change. Appellant indicated that she did not receive a promotion. She reported that in October 1995 she received a performance evaluation of below fully successful which was done by a former supervisor who had been transferred to another position three to four months previously. Appellant stated that decisions were made regarding total quality leadership staff without consulting her as head of the functioning unit. She claimed that she was not routinely consulted in decision making or advisory capacities which limited her performance under her position description. Appellant indicated that she was informed on April 7, 1997 that the total quality leadership function was to be realigned. She reported that she saw her physician on April 9, 1997 for back and muscle pain, heart palpitations and profuse sweating.

In a July 16, 1997 decision, the Office denied appellant's claim for compensation on the grounds that she had not established that she had sustained an injury in the performance of duty because she had not shown that the employing establishment had erred or acted abusively in carrying out the administrative function of awarding the promotion. On August 1, 1997 she requested a hearing before an Office hearing representative which was conducted on March 4, 1998. In a May 22, 1998 decision, the Office hearing representative found that appellant's claims relating to promotion and her performance evaluation were administration actions that were not within the performance of duty. The hearing representative indicated that she had not submitted any corroborating evidence to show that the Office had erred or acted

abusively in these actions. The hearing representative further found that appellant had not alleged that her emotional condition arose from the performance of her assigned duties but from her frustration in not being allowed to work in a particular environment. The hearing representative stated that she had not shown that she was subjected to retaliation as a result of her statement given in the course of the sexual harassment complaint. The hearing representative therefore affirmed the Office's July 16, 1997 decision.

In an April 6, 1999 letter, appellant requested reconsideration and submitted additional evidence. In a July 6, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative 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 with the Board.[1] As appellant's appeal was filed on August 4, 1999, the Board has jurisdiction only over the Office's July 6, 1999 decision.

The Board finds that the 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 specific point of law, advancing a relevant legal argument not previously considered by the Office or submitting relevant and pertinent new evidence not previously considered by the Office. 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.[2] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[3]

Appellant submitted a May 22, 1997 medical report from Dr. Gregory J. McHugh, a Board-certified family practitioner, which had been submitted previously and reviewed by the Office. The report, therefore, was duplicative and was insufficient to require reopening of her case. Appellant also submitted documents she had obtained from the employing establishment relating to its consideration of her claim. In a June 5, 1997 memorandum, Robert E. Thompson submitted a copy of a synopsis of Board decisions. He commented that appellant's claim would be tough to controvert because her physician had stated that appellant's employment had not caused her condition but had aggravated it. In a July 2, 1997 memorandum, Marcus L. Hill noted that appellant was gathering statements from witnesses and was providing additional medical evidence. Mr. Hill recommended interviewing those employees who gave statements to appellant so that the employing establishment's representatives would have a better feel for the environment at that time and appellant's relationship with the chain of command. Appellant

[1] 20 C.F.R. § 501.3(c).

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

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

contended that these memoranda showed the employing establishment's intent to circumvent her legitimate claim for compensation during the six-week period she was on medical leave due to stress. She further argued that the employing establishment planned to improperly controvert her claim. The memoranda submitted by appellant, however, only shows that the employing establishment was preparing a response to appellant's compensation claim, an administrative action. The employing establishment only acted to controvert her claim on the grounds that her condition did not arise from her employment. Appellant did not submit any evidence that the memoranda showed that the employing establishment's preparation to controvert appellant's claim was in error or abusive. Her argument, based on these memoranda, has no legal color of validity and therefore is insufficient to require that the Office conduct a merit review of appellant's claim.[4]

The decision of the Office of Workers' Compensation Programs dated July 6, 1999 is hereby affirmed.

Dated, Washington, DC
November 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[4] *Constance G. Mills*, 40 ECAB 317 (1988).