

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY GROUDAS and U.S. POSTAL SERVICE,
POST OFFICE, Staten Island, NY

*Docket No. 00-877; Submitted on the Record;
Issued April 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On April 8, 1998 appellant, then a 38-year-old mark-up clerk, filed a notice of occupational disease alleging that she sustained a stress-related emotional condition in the performance of duty, due to months of harassment from her supervisor. Appellant stopped work on April 3, 1998 and has not returned.

By decision dated October 2, 1998, the Office denied appellant's claim on the grounds that she failed to provide sufficient evidence to support her allegations that she sustained an injury in the performance of duty. The Office found that eight specified factors cited by appellant involved administrative or personnel matters in which appellant had not established error or abuse by the employing establishment. The Office further found that three additional specified factors cited by appellant, including harassment by appellant's supervisor were not accepted as factual, since appellant submitted no corroborating proof.

By letter dated August 23, 1999, appellant through her attorney requested reconsideration of the October 2, 1998 decision. Appellant submitted as new evidence a medical report from Dr. Edward Rendon, her psychiatrist, dated August 9, 1999. Appellant's counsel reasserted that appellant's emotional condition resulted from the abusive actions of her supervisor in the course of her employment and that the medical evidence supports causal relationship. He further asserted that the Office routinely discounts the statements of claimants and witnesses made in occupational disease claims involving emotional stress, and accepts as truthful contradictory statements made by the employing establishment without fully investigating the claim. Appellant's counsel also argued that the Office based its decision in this case exclusively on the denial made by appellant's supervisor, without properly developing the evidence.

By decision dated November 1, 1999, the Office found that the evidence submitted in support of appellant's request was insufficient to warrant a merit review of the prior decision. In a memorandum attached to the decision, the Office found after a limited review of the evidence that the decision was not found to be erroneous. Regarding the assertion made by appellant's counsel that the medical evidence supports causal relationship, the Office stated that appellant's claim was denied because it was not established that the injury occurred in the performance of duty; therefore an analysis of the medical evidence was not undertaken. The Office then considered the contentions made by appellant's counsel regarding bias of the Office against claimants and failure to conduct full investigations, and found no evidence to substantiate his contentions.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on appeal is the Office's November 1, 1999 decision in which the Office denied appellant's application for review on the grounds that the evidence submitted was insufficient to warrant review and, as that is not a merit decision, the only issue before the Board is whether the Office abused its discretion in refusing to reopen her case for merit review under 5 U.S.C. § 8128(a).¹

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

In this case, the Office had denied appellant's claim on the grounds that the evidence failed to establish that the activities or factors cited by appellant in her emotional condition claim occurred in the performance of duty. The arguments advanced by appellant in support of her request for reconsideration were not relevant or pertinent to evidence previously considered by the Office. Although appellant raised arguments to be determined in her request, none of them raised a concern that the Office had erroneously applied or interpreted a specific point of law in her case. Arguments made by appellant's counsel that the Office routinely discounts statements made by claimants and witnesses and accepts as truthful, statements made by the employing establishment simply do not address the relevant issue in this case. Further, the argument that the Office solely relied upon the statement of appellant's supervisor denying harassment in this

¹ See 20 C.F.R. § 501.3(d) (because more than one year has elapsed between the issuance of the Office's October 2, 1998 decision and December 21, 1999, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the October 2, 1998 and prior decisions).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

case is also irrelevant here. Appellant failed to provide with her reconsideration request any new or relevant factual evidence identifying compensable factors of employment alleged to have caused or contributed to her claimed emotional condition. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.⁴

As appellant's August 23, 1999 reconsideration request did not meet at least one of the three requirements for obtaining a merit review under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying the request.

The decision of the Office of Workers' Compensation Programs dated November 1, 1999 is affirmed.

Dated, Washington, DC
April 9, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

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