

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CONSTANCE E. COHORN and U.S. POSTAL SERVICE,  
POSTAL INSPECTION SERVICE, Memphis, TN

*Docket No. 01-1030; Submitted on the Record;  
Issued December 6, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

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

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's claim for further review of the merits.

On June 8, 1998 appellant, then a 49-year-old operations support technician, filed an occupational disease claim alleging that her emotional condition was causally related to factors of her federal employment.<sup>1</sup>

By decision dated May 21, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a June 15, 1999 letter, appellant requested an oral hearing, which was held on October 28, 1999.

In a decision dated February 10, 2000, the hearing representative denied the claim on the grounds that appellant had failed to establish any compensable work factors. By letter dated February 9, 2001, appellant requested reconsideration of the hearing representative's decision.

By decision dated March 3, 2001, the Office denied appellant's request for a merit review of her claim.

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<sup>1</sup> The record reveals that appellant retired from the employing establishment on disability on February 14, 1998.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>5</sup>

In requesting reconsideration, appellant's counsel stated that appellant identified three work factors in a December 3, 1999 report of Dr. Mace C. Coday, a psychologist. Specifically, appellant was unable to perform her duties as coordinator of the construction/space utilization project. Also, she was unable to perform her security clearance duties because she was not provided with the necessary information. Finally, she lacked the necessary experience and training for the secretarial position to which she was assigned at the employing establishment's office in Nashville, Tennessee. The Office previously considered these arguments. Thus, they are repetitive and, therefore, insufficient to warrant a merit review of the case.

Because Dr. Coday was not a witness to the incidents at the employing establishment, which appellant alleges caused her emotional condition, the physician's narrative report is insufficient, absent corroboration, to establish any compensable employment factors. Therefore, the Office properly found this evidence insufficient to warrant merit review.

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office or to raise any substantive legal questions, the Office acted within its discretion in refusing to reopen appellant's claim for review of the merits.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

The March 3, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 6, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member