

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. WEISS and DEPARTMENT OF TRANSPORTATION,
RESEARCH & SPECIAL PROGRAMS ADMINISTRATION, Washington, DC

*Docket No. 00-205; Submitted on the Record;
Issued January 5, 2001*

DECISION and ORDER

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

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 November 5, 1996 appellant, then a 47-year-old transportation specialist, filed a notice of occupational disease alleging that she developed an emotional condition due to harassment, abuse and stress at work beginning July 1996. On the reverse side of the form, appellant's supervisor indicated that appellant stopped work on October 10, 1996 and has since not returned.

Appellant submitted factual and medical evidence to the Office in support of her claim. The employing establishment submitted a response to the Office to appellant's depiction of her work environment and her allegations of employment-related harassment and abuse.

By decision dated February 24, 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 emotional condition in the performance of duty.

By letter dated February 22, 1999, appellant requested reconsideration of the February 24, 1998 decision. In support, appellant addressed statements submitted by the employing establishment to the Office in response to her claim. Appellant argued that the Office based its February 24, 1998 denial on the statements of the employing establishment, which the Office presumed to be truthful. Appellant also discussed medical evidence and cited cases which she believed, supported her claim involving the Office of Personnel Management (OPM) regarding disability retirement. Appellant submitted an amended notice of removal and a SF-50 form by the employing establishment, a medical report previously of record and a medical report from Dr. James Bulger, an attending physician, dated February 19, 1999.

By decision dated May 26, 1999, the Office found that the evidence submitted in support of appellant's request for review was found to be of an immaterial nature and insufficient to warrant review of the prior decision. In a memorandum attached to this decision, the Office stated: "It has been determined that this evidence is not relevant to the issue in this case. The claim was denied for performance of duty. Factual evidence has not been received which would satisfy the requirement of establishing performance of duty."

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).

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.¹ 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.²

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by the Office. Neither did appellant submit relevant and pertinent new evidence not previously considered by the Office. In support of her request for reconsideration, appellant argued that the Office denied her claim based solely on the responses of the employing establishment to her allegations of job-related stress, harassment and abuse. Appellant further discussed medical evidence, which she argued provided a basis for her claim, and cited OPM cases regarding disability retirement. Appellant also submitted administrative paperwork regarding her removal from her position and medical reports. Neither the arguments nor the evidence submitted by appellant with her February 22, 1999 request for reconsideration addressed the issue previously decided by the Office: whether appellant sustained an injury in the performance of duty beginning July 1996, as alleged. Appellant failed to provide with her reconsideration request any new or relevant factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her conditions. 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.³

As appellant's February 22, 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.

¹ 20 C.F.R. §§ 10.606(b)(2) (1999).

² 20 C.F.R. § 10.608(b) (1999).

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

The decision of the Office of Workers' Compensation Programs dated May 26, 1999 is affirmed.

Dated, Washington, DC
January 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member