U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL J. HOWARD and U.S. POSTAL SERVICE,
Oklahoma City, OK

Docket No. 00-1642; Submitted on the Record;
Issued May 22, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits.

On May 23, 1996 appellant, then a 47-year-old training technician, filed a claim for extreme anxiety and depression that she attributed to too much work, inability to please her supervisors and managers and unfair treatment in her employment. She was terminated on February 10, 1996 for submission of false information on an official matter.

By decision dated July 29, 1996, the Office found that appellant's claim was not timely filed. Appellant requested reconsideration, and submitted additional evidence. By decision dated September 4, 1997, the Office found that appellant had not cited and substantiated any potentially compensable factors of employment.

By letter dated September 1, 1998, appellant requested reconsideration and submitted a copy of a May 20, 1998 decision of the Equal Employment Opportunity Commission (EEOC) finding that the employing establishment breached a February 9, 1993 settlement agreement by not offering appellant priority consideration for a position in January 1994. By decision dated October 27, 1998, the Office found that this EEOC decision "was sufficient for the Office to perform a merit review and further develop the claim." The Office's decision then stated:

> "The final decision submitted by the claimant indicates the agency's decision was improper and is reversed. The case was remanded to the agency to provide the claimant with priority consideration for the next vacancy for which she may apply and be eligible and qualified for.
>
> "The filing of an EEO complaint or grievance is not a part of the claimant's regularly assigned duties. The mere fact that a disciplinary action was later modified or rescinded does not establish error or abuse by the employing [establishment]." [Footnote omitted.]

By letter dated April 3, 1999, appellant requested reconsideration and submitted an undated report from her attending psychiatrist, Dr. John R. Smith, describing his treatment of appellant from January 26, 1996 to April 23, 1999 and opining that her psychiatric condition was related to incidents in her employment, which he described.

By decision dated September 7, 1999, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions. The Office added that it was not necessary to review the medical evidence because no potentially compensable factors of employment had been cited and substantiated.

By letter dated October 25, 1999, appellant, through her attorney, requested reconsideration, contending that the May 20, 1998 EEOC decision "established that the agency committed error and/or abuse by not complying with the settlement agreement concerning her complaints of discrimination." A copy of the May 30, 1998 EEOC decision accompanied the request for reconsideration. By decision dated December 29, 1999, the Office found that the EEOC decision had been previously submitted and considered; this evidence was repetitious and duplicative and thus insufficient to warrant review of the prior decisions.

The only decisions before the Board on this appeal are the Office's September 7 and December 29, 1999 decisions finding that appellant's requests for reconsideration were not sufficient to warrant review of its prior decisions. Since more than one year elapsed between the date of the Office's most recent merit decision on October 27, 1998 and the filing of appellant's appeal on March 27, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.[1]

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:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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. Evidence that repeats or duplicates evidence already in the record or[2] that

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

does not address the particular issue involved has no evidentiary value and does not constitute a basis for reopening a case.[3]

Appellant's April 3, 1999 request for reconsideration was identical to her September 1, 1998 request that resulted in a merit review. Thus the April 3, 1999 request for reconsideration did not advance a legal argument not previously considered. It also did not show that the Office erroneously applied or interpreted a specific point of law.

The only evidence submitted with the April 3, 1999 request for reconsideration was a medical report from appellant's attending psychiatrist. However, the Office's merit decision of October 27, 1998 found that no potentially compensable factors of employment had been cited and substantiated. Therefore, the medical report does not constitute relevant and pertinent evidence. The Board has stated that the medical evidence need not be considered when an employee does not substantiate a compensable employment factor.[4]

In her October 25, 1999 request for reconsideration, appellant contended that the May 20, 1998 decision of the EEOC finding that the employing establishment breached a settlement agreement showed error or abuse by the employing establishment. This legal argument was previously made in appellant's September 1, 1998 request for reconsideration and was considered by the Office in its October 27, 1998 merit decision, in which the Office recognized that the EEOC decision indicated that the employing establishment's decision was improper but found that the decision did not establish error or abuse by the employing establishment. Therefore, she has not advanced a legal argument not previously considered. Because appellant failed to meet any of the requirements of section 10.606(b)(2), the Office properly denied merit review.

The decisions of the Office of Workers' Compensation Programs dated December 29 and September 7, 1999 are affirmed.

Dated, Washington, DC
May 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

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

[4] *Martin Standel*, 47 ECAB 306 (1996).