

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA R. CROWSON and U.S. POSTAL SERVICE,
POST OFFICE, Riverton, WY

*Docket No. 02-2010; Submitted on the Record;
Issued December 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On November 30, 2000 appellant, then a 27-year-old city carrier, filed an occupational injury claim alleging that on or about August 18, 2000 she suffered depression and anxiety as a result of harassment from her supervisor, Dick Kerns. Appellant outlined various incidents alleged to have occurred in August and September 2000, in which Mr. Kerns had belittled her and singled her out, made false accusations regarding her job performance and threats regarding her job security. Appellant contended that she received a seven-day suspension for improperly delivering one piece of mail and that no one else had been subject to such strict discipline.

By decision dated February 26, 2001, the Office denied appellant's emotional condition claim. Following development of the claim, the Office found that appellant actually experienced the alleged employment factors, however, that the evidence did not establish that a condition was diagnosed in connection with the alleged factors. The Office noted that the medical evidence received in support of the claim was prepared by a licensed social worker and not a physician, which is required by the Federal Employees Compensation Act.

In a letter dated March 13, 2001, appellant requested reconsideration and submitted medical evidence from her physician, Dr. Thomas Niethammer, a Board-certified internist. On April 6, 2001 the Office furnished the employing establishment with appellant's subsequent factual allegations of harassment for comment and the Office received a response on April 27, 2001.

By decision dated May 10, 2001, the Office modified the February 26, 2001 decision, to reflect that the claimed injury did not occur in the performance of duty. The Office found upon further development that the events alleged by appellant including monitoring of her work, investigations, job assignments, criticism of work performance and discipline did in fact occur,

however, that they were administrative and personnel functions undertaken by the employing establishment. The Office further found that statements made by appellant's supervisor regarding other employees, language used by him with another individual and certain arguments over religion were not a part of an employees regularly assigned duties and were, therefore, noncompensable. The Office determined that although appellant had an emotional reaction to the above administrative functions, since such functions do not constitute compensable factors of employment, appellant did not sustain an injury in the performance of duty.

In a letter dated May 6, 2002, appellant requested reconsideration and submitted additional evidence. In her request, appellant maintained that her emotional condition was caused by actions of management and submitted a detailed account of incidents previously considered by the Office. Appellant further argued that representatives of the employing establishment had been dishonest in responding to her allegations of harassment and that evidence submitted on reconsideration served to discredit their challenges of her claim. Appellant submitted a letter from Gary Sims dated November 1, 2000, which discussed appellant's work performance. The letter stated: "Will this ever end? I'm not sure what additional training we can give her. We need to constantly monitor her. Every time the [tele]phone rings it's a complaint about her delivery. Mike Moss and Rex Smith came into my office yesterday and asked that we expedite our handling of her because they were tired of doing her work and covering for her."

Appellant further submitted a statement from Mr. Smith, which she contended discredited him in light of the November 1, 2000 statement from Mr. Sims. The statement from Mr. Smith stated:

"This statement concerns a conversation that took place on October 31, 2000 between [Mr.] Moss, [Mr.] Smith and [Mr.] Sims. [Mr. Moss] and I meet with [Mr.] Sims to discuss the help situation in Riverton.... At no time was it suggested that [appellant] be let go or fired. What was said is that we felt it was impossible for her to learn the job properly because [Mr.] Kerns is an impossible person to work for."

Appellant also submitted a statement from Mr. Smith, which she contended on reconsideration established that Mr. Kerns and Laurie Bisbee, a coworker discussed in her factual allegations of harassment, had a relationship. Appellant argued that Ms. Bisbee would lie to support false statements made by Mr. Kerns in response to appellant's claim. The statement from Mr. Smith to appellant stated: "Yes, it is public knowledge at this point that they are a couple...."

By decision dated June 11, 2001, the Office found that no evidence was submitted to create a compensable work event within the context of appellant's original statements reviewed by the employing establishment prior to the May 10, 2001 decision. The Office determined based on a limited review of the evidence submitted on reconsideration that a merit review of the May 10, 2001 decision was not warranted.

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

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on July 25, 2002 the only decisions properly before the Board is the June 11, 2002 decision.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,² 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.³ 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.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.⁵

In her May 6, 2002 request for reconsideration, appellant did not raise any new relevant legal argument or show that the Office erroneously applied or interpreted a specific point of law. Appellant submitted a detailed account of the incidents, which she alleged caused her emotional condition and argued that her physician clearly related her condition to her employment. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening the case.⁶ As the Office previously considered these arguments, they are repetitive in nature and thus insufficient to warrant reopening of appellant's claim on the merits.⁷

Appellant also did not submit any relevant and pertinent new evidence with her request for reconsideration. Appellant contended that representatives of the employing establishment were dishonest in statements responding to her allegations of harassment. She submitted with her request statements from the postmaster, Mr. Sims and another employee, Mr. Smith to support her contention that members of the employing establishment were willing to fabricate statements and be dishonest in regard to her treatment in the workplace. Appellant further argued that Mr. Kerns was having a personal relationship with Ms. Bisbee a coworker and, therefore, any statements made by her in contradiction to her own should be discredited. The Office properly found the arguments regarding the credibility of representatives of the employing establishment and statements submitted in support of such contentions do not warrant further

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Oel Noel Lovell*, 42 ECAB 537 (1991).

² 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).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ *James A. England*, 47 ECAB 115, 119 (1995).

review of the case. The statement from Mr. Sims does not establish that management was willing to fabricate any information related to appellant's allegations of harassment and her claimed emotional condition. The statement regarding a personal relationship between two members of the employing establishment is irrelevant to the issue at hand in this case.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The June 11, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member