

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH N. MEYER and U.S. POSTAL SERVICE,
ORANGEVALE POST OFFICE, Orangevale, CA

*Docket No. 01-970; Submitted on the Record;
Issued February 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On October 18, 1993 appellant, then a 32-year-old postal clerk, filed a claim for job stress and anxiety which she related to her work as a window clerk, facing long lines of customers while the employing establishment was understaffed. She stopped working on November 5, 1993. The Office accepted appellant's claim for adjustment disorder with mixed emotional features. The Office began payment of temporary total disability effective November 8, 1993. In a January 9, 1995 decision, the Office found that appellant was not entitled to compensation after December 12, 1993 because she did not cooperate with the employing establishment in the provision of light-duty work. In a July 20, 1995 decision, issued without a hearing, an Office hearing representative found that the Office had not properly followed its procedures in terminating appellant's compensation. She therefore set aside the Office's January 9, 1995 decision. The Office thereupon reinstated appellant's temporary total disability compensation, retroactive to December 12, 1993.

In a November 3, 1998 decision, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence, represented by the report of Dr. Kent P. Hart, a Board-certified psychiatrist, acting as an impartial medical specialist, established that appellant's continuing psychiatric condition was no longer causally related to compensable factors of her employment. The Office therefore terminated appellant's compensation effective November 7, 1998. In a February 17, 1999 letter, appellant requested an appeal of the November 3, 1998 decision. The Office reissued its decision on April 7, 1999 because it had not included a statement to appellant of her rights to appeal.

In an April 14, 1999 letter to the Office's Branch of Hearings and Review, appellant requested an appeal. In a June 8, 1999 decision, the Office asked appellant to clarify what appeal rights she had requested in the February 17, 1999 letter. The Office commented that the only form of appeal appellant seemed to have left was to request reconsideration. In a June 15, 1999

letter, appellant noted that she had sent a letter requesting an appeal on April 14, 1999. She stated that, if the only avenue of appeal left to her was to request reconsideration, she was requesting reconsideration. In an August 27, 1999 decision, the Office found that appellant had requested a hearing before an Office hearing representative on June 21, 1999 but further found that the request was untimely. The Office therefore denied appellant's request for a hearing, and on its own review, found that the case could equally be well addressed by submitting new evidence and requesting reconsideration. In a November 1, 1999 decision, the Office found that the evidence submitted by appellant was insufficient to require modification of the Office's decision.

In a September 28, 2000 letter, appellant requested reconsideration. In a January 10, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative and therefore insufficient to warrant modification of the prior decision.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the filing of an appeal with the Board.¹ As appellant's appeal was filed on February 20, 2001, the Board has jurisdiction only over the Office's January 10, 2001 decision.

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, either under its own authority or on application by a claimant.

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 Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

Appellant submitted in support of her request for reconsideration a September 27, 2000 form report from Dr. Shannon Johnson, a psychiatrist, who stated that appellant had symptoms of anxiety and avoidance of crowds. She diagnosed panic disorder with agoraphobia. She

¹ 20 C.F.R. § 501.3(d).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

commented that the permanent effects of appellant's condition were unknown as panic disorders might have a relapsing and remitting course. She indicated that appellant's condition was related to an employment injury according to the history given by appellant. She stated that appellant was unable to work due to her panic attacks.

The form reports from Dr. Johnson were duplicative of the reports of her prior treating physician, Dr. Janak Mehtani, a Board-certified psychiatrist, who stated that appellant was disabled for work at the employing establishment due to panic attacks, particularly when she was considered for reemployment at the employing establishment. The reports from Dr. Johnson did not provide any new evidence that would contradict the findings and conclusions of Dr. Hart that appellant's psychiatric condition was no longer related to incidents associated with her employment at the employing establishment. As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's September 28, 2000 request for reconsideration.⁶

The decision of the Office of Workers' Compensation Programs, dated January 20, 2001, is hereby affirmed.

Dated, Washington, DC
February 11, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Office's procedure manual requires that, when a reconsideration is delayed beyond 90 days of the request for reconsideration, and the delay would jeopardize appellant's right to a merit review by the Board, the Office should conduct a merit review. However, if the one-year time limit for review by the Board falls within the 90-day period after appellant requested reconsideration from the Office, the Office has no obligation to issue a merit review on insufficient evidence. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7 (January 1992). The Office's last merit decision was issued on November 1, 1999. Appellant's request for reconsideration was submitted on August 29, 2000, which was within 90 days of November 1, 2000, the date by which appellant would have been able to file an appeal for a review on the merits of the Office's November 1, 1999 decision. Appellant therefore was entitled to a merit decision only if she submitted sufficient evidence to warrant a merit review. As noted in the text of this decision, appellant has failed to submit such evidence.