

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH BARBAGALLO and U.S. POSTAL SERVICE,
POST OFFICE, Southern Pines, NC

*Docket No. 00-1953; Submitted on the Record;
Issued July 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

In the present case, appellant filed a claim on April 1, 1996 alleging that she sustained an emotional condition causally related to her federal employment. Appellant alleged that she was subject to verbal, physical and sexual harassment. In a decision dated July 12, 1996, the Office denied the claim. By decision dated November 10, 1997, an Office hearing representative affirmed the prior decision. In a decision dated March 1, 1999, the Office reviewed the case on its merits and again denied the claim.¹

By decision dated March 7, 2000, the Office determined that appellant's February 18, 2000 reconsideration request was insufficient to warrant merit review of the claim.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.² As appellant filed her appeal on May 15, 2000, the only decision over which the Board has jurisdiction on this appeal is the March 7, 2000 decision denying her request for reconsideration.

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration.

¹ The decision purports to modify the prior decisions, but no additional compensable work factors were held to be established.

² See 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant submitted new evidence regarding her claim, including medical reports from Dr. Robert A. Millet, a psychiatrist, and Dr. Edward Carey, a family practitioner. In the March 7, 2000 decision, the Office stated: "[t]he relevant issue in your case is whether you have substantiated a compensable employment factor with corroborative factual evidence. Therefore, the medical evidence you submitted is irrelevant regarding this issue." The record indicates, however, that the Office did accept a compensable work factor in this case. The November 10, 1997 Office hearing representative decision clearly finds that appellant being told "her kind" was not welcome at the employing establishment was substantiated by the record and was a compensable work factor. The Office therefore was incorrect in finding medical evidence irrelevant on the grounds that the issue was whether appellant had substantiated a compensable work factor. The relevance of the evidence submitted must be considered with regard to the accepted compensable work factor in this case.

The case will be remanded to the Office for proper consideration of the evidence submitted under the standard set forth in 20 C.F.R. § 10.606(b)(2). After such further development as it deems necessary, the Office should issue an appropriate decision.

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated March 7, 2000 is set aside and the case remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC
July 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member