

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ROSA E. GARAICOA, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
South Gate, CA, Employer**

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**Docket No. 05-291  
Issued: April 21, 2005**

*Appearances:*  
*Ron Watson, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 12, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 13, 2004 nonmerit decision denying her request for further merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's September 18, 2003 decision denying appellant's emotional condition claim. Because more than one year has elapsed between the last merit decision and the filing of this appeal on November 12, 2004, the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On July 10, 2003 appellant, then a 49-year-old mail carrier, filed a claim alleging that she sustained a depressive disorder and general anxiety disorder “due to harassment from postmaster” on April 28, 2003.<sup>2</sup> Appellant stopped work on May 12, 2003.

Appellant submitted several reports dated between 2001 and 2003 of Alex Lieberman, an attending Board-certified psychiatrist and Dr. Ivan Greenspan, an attending clinical psychiatrist. The record contains an undated statement in which Inez Munoz, a coworker, stated that appellant danced at a party on April 26, 2003 and attended a swap meet the next day.

By letter dated August 12, 2003, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

By decision dated September 18, 2003, the Office denied appellant’s claim on the grounds that she did not establish any compensable employment factors. The Office found that appellant did not explain which employment factors she believed had caused her claimed condition.

By letter dated June 4, 2004, appellant, through her attorney, requested reconsideration of her claim. Appellant asserted that she sustained an emotional condition due to the actions of Priscilla Soto, the postmaster of the employing establishment. She claimed that on April 28, 2003 Ms. Soto unfairly questioned her regarding her attendance at a party and a swap meet during her off-duty hours on April 26 and 27, 2003 and that she wrongly accused her of stealing from the employing establishment and threatened to fire her.

Appellant submitted a September 5, 2003 statement which she produced in response to the Office’s August 12, 2003 request for additional information. She provided further details of her allegations that Ms. Soto harassed her on April 28, 2003, indicating that Ms. Soto wrongly accused her of falsifying her prior claim for a left foot and ankle injury.

Appellant also submitted documents concerning an Equal Employment Opportunity (EEO) complaint she filed against the employing establishment regarding the claimed events of April 28, 2003. She alleged that on that date Ms. Soto harassed her by questioning, charging her with stealing and threatening to fire her. Appellant also claimed that Ms. Soto improperly suggested that she should not seek further medical treatment from her attending physician. In a July 30, 2003 settlement of the complaint, appellant and Ms. Soto agreed that “an atmosphere of dignity and respect in the workplace should be adhered to at all times.”<sup>3</sup>

Appellant also submitted a May 29, 2003 report of Dr. Greenspan and Dr. Herbert Marshak, an attending Board-certified psychiatrist.

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<sup>2</sup> Appellant did not provide any further description of the incident and events at work which she believed caused her condition. The record reveals that in May 2003 the Office accepted that appellant sustained employment-related left foot and ankle strains on April 21, 2003.

<sup>3</sup> The settlement indicated that it should not be construed as an admission of discrimination or wrongdoing by any employing establishment official.

By decision dated July 13, 2004, the Office denied appellant's request for further merit review of her claim.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> 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) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> 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.<sup>6</sup> 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 on the merits.<sup>7</sup>

### **ANALYSIS**

In connection with her June 2004 reconsideration request, appellant, through her attorney, discussed the events of April 28, 2003 which she felt caused her claimed emotional condition, alleging that Ms. Soto, the postmaster, wrongly questioned her regarding her activities on April 26 and 27, 2003, accused her of stealing, and threatened to fire her. She also submitted a September 5, 2003 statement which further discussed the claimed actions of Ms. Soto that she believed caused her emotional condition.

In its September 18, 2003 merit decision, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. The Office found that appellant did not explain which incidents and conditions at work she believed had caused her claimed condition. Prior to September 18, 2003, she had not provided any notable discussion of the incidents and conditions at work which she felt constituted employment factors.<sup>8</sup> Therefore, the addition of the above-described statements to the record provides new and relevant argument regarding appellant's claim. Appellant also submitted documents, including a July 30, 2003 settlement agreement, concerning an EEO complaint she filed against the employing establishment. As this complaint concerns the alleged actions of Ms. Soto on April 28, 2003, the

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<sup>4</sup> 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).

<sup>5</sup> 20 C.F.R. §§ 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.607(a).

<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> An employee's burden in an emotional condition claim includes the submission of a detailed description of the employment factors or conditions believed to have caused or adversely affected the condition or conditions for which compensation is claimed. *Effie O. Morris*, 44 ECAB 470, 473-74 (1993). Appellant had only indicated that she sustained a depressive disorder and general anxiety disorder "due to harassment from postmaster" on April 28, 2003.

submitted documents also constitute relevant information that had not previously been considered by the Office.

For these reasons, the argument and evidence submitted by appellant have not been previously considered by the Office. Therefore, the submission of this argument and evidence requires reopening of appellant's claim for merit review and the Office improperly refused to reopen appellant's claim for merit review in its July 13, 2004 decision.<sup>9</sup> The case shall be remanded to the Office and, after any development deemed necessary, the Office shall conduct a merit review of appellant's claim, pursuant to 5 U.S.C. § 8128(a), and issue an appropriate merit decision.

**CONCLUSION**

The Board finds that the Office improperly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 13, 2004 decision is reversed and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 21, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *supra* notes 4 and 5 and accompanying text; *Kenneth R. Mroczkowski*, 40 ECAB 855, 858-59 (1989).