United States Department of Labor
Employees' Compensation Appeals Board

NANCY A. JOHNSON-CHARPENTIER, Appellant	)	
and	)	**Docket No. 04-1599** **Issued: July 25, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Yuba City, CA, Employer	)	

Appearances:
James A. Birt, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On June 7, 2004 appellant filed a timely appeal from March 3, 2004 and November 21, 2003 Office of Workers' Compensation Programs' nonmerit decisions. Because more than one year has elapsed between the last merit decision dated February 25, 2003 and the filing of this appeal on June 7, 2004, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUES

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 47-year-old city letter carrier, filed a claim for benefits based on an emotional condition on August 22, 2002. Appellant asserted that she began to experience

depression when her supervisor, Frank Marino, denied her request to buy back leave and assigned part-time flexiplace employees (PTF's) to work on her shifts. Appellant also alleged that Mr. Marino took these actions in retaliation for filing an Equal Employment Opportunity (EEO) claim against management.

In an undated statement, Mr. Marino rebutted appellant's allegations. He stated:

> "I received a leave buy back form from [appellant] for the months of January, February and March 2002. I reviewed the form and controverted several dates. On a number of those dates there was work available for [appellant]. [Appellant] chose to go home and provided no medical documentation to support her claim that she left work due to her on-the-job injury. [Appellant] listed two dates in which she had requested annual leave through the annual leave bidding process for carriers. These dates were controverted since they are not eligible for the leave buy back process. [Appellant] was provided work within her medical restrictions, and if [appellant] was unable to work due to her injury, or had a medical appointment, she was to use the leave buy back process for time lost."

By letter dated September 10, 2002, the Office advised appellant that she needed to submit additional information in support of her claim. The Office requested that she submit additional medical evidence in support of her claim, including a comprehensive medical report describing how factors of her employment resulted in the claimed condition, and provide factual evidence, which would establish that she had developed an emotional condition caused by factors of her employment.

Appellant submitted a written statement dated September 26, 2002 in which she stated:

> "At the [employing establishment] I have endured harassment, discrimination, violence in the workplace, falsifying information to the Department of Labor and retaliation since 1998 over my medical limitations due to an on-the-job injury. I have filed numerous grievances and in November 2000 filed an EEO complaint. In December 2000 there was a mediation with a settlement agreement form. I filed a complaint to go formal since they were not following the agreement. The [employment establishment] has worked part-time employees and off the job injured employees over me and sent me home to utilize leave buy back."

Appellant stated that she had filed numerous EEO complaints since Mr. Marino had been at the employing establishment, for which he has retaliated by controverting the hours she requested on CA-7 forms for leave buy back.

In a report dated October 14, 2002, Dr. Ethan G. Harris, a psychiatrist and neurologist, stated:

> "[Appellant] has been experiencing a depressive disorder and anxiety disorder, related to alleged abuse in her employment with the employing establishment. She is now disabled due to psychiatric symptoms. It is uncertain whether she will be able to return to the work situation due to adverse circumstances there. She requires continued psychiatric treatment, with counseling and medications. She is

seeking retraining and transfer at her employment. She is not yet permanent and stationary in her present condition, and improvement may occur in the future."

By decision dated February 25, 2003, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established.

On August 22, 2003 appellant requested reconsideration. Appellant submitted a September 8, 2003 report from Dr. Harris, who stated that appellant had a history of depression, sleep problems and issues of stress at work. He diagnosed major depression caused and aggravated by workplace events.

Appellant also submitted a November 15, 2002 report from Elizabeth B. Blake, a marriage counselor, who noted that appellant complained of feeling persecuted and discriminated against, and had exhibited symptoms of depression.[1]

By decision dated November 21, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

In a letter received December 4, 2003, appellant requested reconsideration. Appellant submitted a January 20, 2003 report from Dr. Michael C. Andrews, a podiatrist, who stated that appellant had experienced recurring pain in her left foot which substantially limited her weight bearing activities, which have affected her work activities and her personal life. Appellant also submitted a June 27, 2003 settlement agreement with the employing establishment.

By decision dated March 3, 2004, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), 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 evidence not previously considered by the Office.[2] 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.[3]

[1] The Board notes that a report from the marriage counselor does not constitute medical evidence pursuant to section 8101(2).

[2] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[3] *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Prior to the November 21, 2003 decision, appellant submitted a September 8, 2003 report from Dr. Harris in which he diagnosed major depression caused and aggravated by workplace events and a January 30, 2003 report from Dr. Andrews which discussed appellant's left foot problems and their affect on her work and personal activities. These reports, however, did not address the relevant issue of whether appellant implicated compensable factors of employment sufficient to establish *prima facie* that she sustained an emotional condition in the performance of duty. The November 15, 2002 report from Ms. Blake, a marriage counselor, is not relevant because it does not constitute medical evidence pursuant to section 8101(2). With regard to the March 3, 2004 nonmerit decision, the June 27, 2003 settlement agreement with the employing establishment was also not relevant to the issue at bar, as a settlement agreement does not constitute an admission of guilt and is not a compensable factor of employment.[4] The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[5] Moreover, Dr. Harris' September 8, 2003 report was previously considered and rejected by the Office in a previous decision and is therefore cumulative and repetitive. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

[4] The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse. *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

[5] *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2004 and November 21, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 25, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board