

	)	
<b>S.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 08-320</b>
	)	<b>Issued: May 16, 2008</b>
<b>U.S. POSTAL SERVICE, LOOP STATION,</b>	)	
<b>Chicago, IL, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On November 13, 2007 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated July 31, 2007, which denied merit review. More than one year has elapsed between the most recent merit decision of the Office hearing representative dated August 4, 2006 and the filing of this appeal on November 13, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

The issue is whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

On June 9, 2005 appellant, then a 40-year-old letter carrier, filed an occupational disease claim alleging that her anxiety was due to harassment by management. In an attached statement, she alleged that her route was overburdened and she was harassed and overmanaged by Malcolm Harris, Francine Snead and Andrea Terry. Appellant stated that each day she was “required to

fill out a 3996.” Next she alleged that, whether or not she requested overtime, it was always a problem with Ms. Harris, Ms. Snead and Ms. Terry. Appellant also contended these women harassed and threatened her daily and lied about her.

On June 8 and 22 and July 6, 2005 Dr. Edwin E. Hollins stated that appellant was totally disabled. In the July 6, 2005 report, he indicated the period of disability as May 14 to November 14, 2005.

On June 16, 2005 the employing establishment controverted appellant’s claim. Ms. Snead, appellant’s supervisor, stated that appellant “has not performed on the route up to the expectations of a city letter carrier” and that concessions were made to help appellant while learning the route. Ms. Snead stated that she and Ms. Harris had gone “on street supervision together” several times for training purposes. She denied appellant’s allegation of harassment and that appellant’s “inability to complete her assignment has resulted in excessive man-hours, overtime, penalty overtime, and the squandering of human resourced (sic).”

On July 11, 2005 the Office received a statement by Paula McHenry, Loop Station Manager. Ms. McHenry stated that appellant’s supervisor worked with appellant “and provide[s] her with what she needs even if we do not agree that she needs as much help as her request.” Appellant informed Ms. McHenry that if Ms. Terry and Ms. Snead “did not stop harassing her she was going to file an Equal Employment Opportunity and go off on stress.”

In a letter dated June 19, 2005, the Office informed appellant that the evidence of record was insufficient to support her claim and advised her of the medical and factual evidence needed.

The Office subsequently received carrier-auxiliary control forms dated May 20, 21, 23 to 27, 31 and June 1, 2, 6 and 7, 2005; mediation conference memoranda dated July 18 and 21, 2005; a final interview notice dated August 9, 2005 regarding appellant’s right to file a discrimination claim; her statements dated June 2, 2003 and August 9, 2005; undelivered mail reports dated May 23, 24, 26 and June 6, 2005; PS 3996 forms dated May 20 through June 7, 2005, an August 1, 2005 report by Dr. Hollins; a June 7, 2005 letter of warning; a June 20, 2005 USPS-NALC joint step A grievance form.

On August 1, 2005 Dr. Hollins stated that appellant informed him that her supervisor was harassing and persecuting her at work. He opined that as appellant had never presented with an emotional complaint during treatment, that it was clear “her work environment was the proximate cause” of her “drastic deterioration in her state of emotional well-being.” Dr. Hollins diagnosed general anxiety disorder and depression. On June 22, 2005 he noted seeing appellant who “was less agitated but the thought of returning to her hostile work environment terrified her.” In concluding, Dr. Hollins opined that appellant’s major depression and anxiety were “clearly related to her job and the failure of management to provide a reasonably stress free, nonhostile environment for the patient to work in.”

In her August 9, 2005 statement, appellant described the various events which she alleged created a hostile work environment and showed harassment by her supervisor. She also alleged that her mail route was “too overbearing” and could not be done in eight hours. Next, appellant stated that she was told to complete a 3996 form daily to request help with her route and

overtime. She alleged that she was unable to deliver all the mail to two buildings within eight hours. Appellant next alleged that she was not allowed to go to the restroom without permission. She alleged that she was the only person delivering mail while there were four to six coworkers who helped case her mail daily. In a May 23, 2005 statement, appellant alleged that the union steward agreed her route would take 10 hours to complete, but her route had never been tested. Next, she alleged that Ms. Snead forced her to ride out with other truck drivers and took her car fare. Appellant also alleged that Ms. Snead called her into her office and loudly informed her that she had incorrectly filled out the Form 3996; that she is ordered to go out onto the streets immediately upon arrival at work despite the presence of a number of other carriers in the building. Next, she alleged that on May 25, 2005 Ms. Harris suggested that she was disappearing while delivering mail and leaving mail for her sub to deliver. On May 26, 2005 appellant alleged that Ms. Williams and Supervisor Danny Dacanay were sent to observe her and that Ms. Snead threatened to write her up.

In November 14, 2005, Ms. Snead responded to appellant's allegations and denied she was harassed or treated differently from other employees.

In a letter dated November 15, 2005, Ms. Terry, A/Tour Superintendent, Loop Station, responded to appellant's allegations. She noted that appellant received assistance with her route everyday "so there was no stress." Ms. Terry stated that appellant had "a history of filing accident and claims for stress in order to be off for extended periods of time."

On November 18, 2005 Dr. Hollins opined that appellant continued to be totally disabled from working.

On November 23, 2005 Kurtis L. Noblett, Ph.D., licensed clinical psychologist, noted that he had seen appellant for psychotherapy for the past five months.

By decision dated December 14, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an emotional condition in the performance of duty. The Office found that appellant having to complete a Form 3996 everyday was within the performance of duty. It found evidence of record insufficient to establish any other compensable factor. The Office found the medical evidence insufficient to establish that appellant's condition was caused or aggravated by the accepted factor of employment.

By letter dated January 9, 2006, appellant requested an oral hearing before an Office hearing representative, which was held on May 1, 2006. In support of her request, she submitted a January 9, 2006 report by Dr. Hollins

Following the hearing, the Office received comments by the employing establishment regarding appellant's testimony, documentation or "clock rings" showing her actual hours; a statement by Robert Bisbee, route examiner, relating that appellant had terrible work habits and that no route in Zone 60601 is overburdened; statements by Gene Gray, carrier, Ms. Harris, union steward and Gregory Bringham, previous carrier for Route 108, stating they had never heard Ms. Snead curse, talk loud or be disrespectful Ms. Snead's statement that she had never sworn or been disrespectful towards an employee; a statement by Mr. Dacanay, supervisor

customer service, Loop Station, stating that three people assist on Route 108 which helps to keep it to an eight-hour assignment and denied that appellant worked about 10½ hours each day; a statement and two letters dated May 24, 2006 by Ms. McHenry, operations manager, Loop Station.

In one of Ms. McHenry's letters, she noted that appellant's route was an eight-hour route due to the assistance of three people casing the mail. Appellant said delivery time was about four hours. Ms. McHenry stated appellant "has not been honest in her accusations" and during the majority of her career she had spent "filing claims and doing duties other than mail delivery." In concluding, Ms. McHenry stated that she does not allow employees to be yelled or cursed at and that she had investigated appellant's claim and "found them to be untrue."

In her other letter dated May 24, 2006, Ms. McHenry stated that appellant's allegation that she worked 10½ hours per day was untrue. She noted that appellant has worked a total of 82 days for the period January 21 to May 12, 2006.

In an August 4, 2006 decision, an Office hearing representative affirmed as modified the December 14, 2005 decision. He found that appellant had failed to submit evidence establishing appellant's complaints of harassment and overwork. The hearing representative also found that the requirement to submit routine requests for route assistance was not a compensable factor as these requests were routinely requested and granted.

The record contains copies of carrier -- auxiliary control forms dated July 24, 25, 26 and 28, 2006; carrier worksheets dated September 25 to 30, 2006; summary of carrier worksheets dated September 25 to 29, 2006 and October 15, 2006; carrier inspection worksheet dated September 28 and 29, 2006, September 2006 NALC summary of counts; and appellant's September 28, 2006 statements, which were received on May 10 and 17, 2007. On September 28, 2006 appellant stated that she was filing a grievance regarding the route inspection which occurred from July 24 through July 28, 2006.

On May 18, 2007 the Office received appellant's letter requesting reconsideration. Appellant reiterated her contentions that she was harassed and overworked. She went on to discuss that she was denied a bid for another mail delivery route.

In a July 31, 2007 decision, the Office denied appellant's request for reconsideration on the grounds that it did not include new and relevant evidence and thus it was insufficient to warrant a merit review of the Office's prior decisions.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>1</sup> the Office's regulation 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

---

<sup>1</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).

new evidence not previously considered by the Office.<sup>2</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>3</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 of the merits.<sup>4</sup>

### ANALYSIS

The only decision before the Board in this appeal is the July 31, 2007 decision of the Office denying appellant's application for review of its August 4, 2006 Office hearing representative's decision. Because more than one year had elapsed between the date of the August 4, 2006 merit decision and the filing of her appeal with the Board on November 13, 2007, the Board lacks jurisdiction to review the merits of appellant's claim.<sup>5</sup>

The Office hearing representative affirmed as modified the denial of appellant's emotional condition claim by decision dated August 4, 2006. The Office hearing representative found that appellant submitted insufficient evidence to establish any compensable factors of employment. He found that the Office incorrectly determined that appellant's completing a Form 3996 was a compensable factor as it was a routine responsibility. On May 18, 2007 the Office received appellant's request for reconsideration.

The critical issue at the time of the last merit decision in the case was whether appellant established any compensable factors of employment. To be relevant, the evidence submitted in support of the request for reconsideration, which was received on May 18, 2007, must address that issue. The denial of a bid request for another mail route is irrelevant to the claim. Similarly, appellant's statement that she was filing a grievance is irrelevant as it does not contain factual evidence establishing any compensable employment factors. The various forms submitted by appellant are insufficient to support her claim as these forms are not relevant to her allegation of harassment or overwork. The Board has held that the submission of evidence irrelevant to the issue involved is not a basis for reopening a case.<sup>6</sup> Additionally, appellant's letter requesting reconsideration is insufficient to establish her allegations of harassment and overwork as factual as she provided no corroboration. Moreover, these allegations are cumulative and repetitious of those previously presented and considered by the Office and thus are of no evidentiary value and do not constitute a basis for reopening a case.<sup>7</sup>

---

<sup>2</sup> 20 C.F.R. § 10.606(b)(1)-(2). *See Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>3</sup> *Id.* at § 10.607(a).

<sup>4</sup> 20 C.F.R. § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

<sup>5</sup> 20 C.F.R. § 501.3(d)(2).

<sup>6</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>7</sup> *See L.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-1928, issued May 31, 2007); *Eugene F. Butler*, 36 ECAB 393 (1984).

Thus, appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 31, 2007 is affirmed.

Issued: May 16, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board