

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA NG and DEPARTMENT OF DEFENSE, DEFENSE
FINANCE & ACCOUNTING SERVICE, Cleveland, Ohio

*Docket No. 97-199; Submitted on the Record;
Issued September 22, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On March 28, 1995 appellant, then a 44-year-old civilian pay technician, filed a claim for an occupational disease, Form CA-2a, alleging that she suffered from stress and anxiety as well as flu due to extreme coldness in the office. Appellant stated that on December 20, 1994 when she arrived in the office, her supervisor, Janet Okemura, was waiting for her with her hands on her hips in a position of anger and told appellant she was three minutes late. Appellant stated that at that time she was sick with the flu from the air conditioning and told her supervisor that the 30 minutes of leave should be charged to workers' compensation. Appellant submitted evidence to support her claim including medical reports and her own statements of how she believed her work environment caused her stress.

By decision dated June 7, 1995, the Office denied the claim stating that a disabling emotional condition commencing December 20, 1994 caused by the performance of duty had not been established and there was no factual or medical evidence supporting a chronic cold or flu condition or that such condition arose out of factors of employment.

By letter dated June 12, 1995, appellant requested reconsideration of the Office's decision and submitted additional evidence including medical reports dated July 8, 1995, progress notes dated from June 30 to July 5, 1995 and attending physician's reports, CA-20s, dated July 10, 1995 from Dr. Russell M. Tom, a Board-certified internist and appellant's treating physician. In his July 8, 1995 report, Dr. Tom diagnosed stress and anxiety "stemming from appellant's work environment" and stated that she had episodes of increased stress when

conflicts with her supervisor occurred. Appellant also submitted a medical report dated August 8, 1995 and a CA-20 dated August 7, 1995 from Dr. Byron A. Eliashof, a Board-certified psychiatrist and neurologist. In his August 8, 1995 report, Dr. Eliashof noted incidents of stress at work as in appellant's supervisor yelling at her and papers disappearing from her desk. He diagnosed adjustment disorder with physical symptoms secondary to perceived office dysfunction and stated that appellant's psychiatric illness was due to work-related stress. Further, appellant submitted a statement from a witness dated August 14, 1995 addressing problems she had at work. The witness stated that it was very cold in the office where she and appellant worked, and that there was an enormous backlog on appellant's desk although she stated that everyone had a backlog.

By decision dated July 12, 1996, the Office denied appellant's reconsideration request.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on October 1, 1996, the only decision properly before the Board is the July 12, 1996 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ 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.⁵ Evidence that does not address the particular issue involved, in this case whether factors of employment caused appellant's stress and anxiety or whether coldness in the office from air conditioning caused appellant's flu,⁶ does not constitute a basis for reopening the case.⁷

In the present case, the medical evidence appellant submitted including Dr. Tom's July 8, 1995 report and Dr. Eliashof's August 8, 1995 report and August 7, 1995 CA-20 is not relevant because the doctors do not address how appellant's emotional condition was caused by her employment. The witness's August 14, 1995 statement is also not relevant because it is not

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8181 *et seq.*

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *See June A. Mesarick*, note 1 at 908 (1990).

⁷ *Richard L. Ballard*, note 7 at 150; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

medical evidence and does not address a causal relationship between appellant's work and physical and emotional condition.

Appellant has not established that the Office abused its discretion in its July 12, 1996 decision by denying appellant's request for a review on the merits of its June 7, 1995 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 22, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member