

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVANGELINA ULANOFF and U.S. POSTAL SERVICE,
NIMITZ STATION, San Antonio, Tex.

*Docket No. 96-1603; Submitted on the Record;
Issued June 1, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for merit review.

On August 30, 1993 appellant, then a 36-year-old letter carrier, filed a notice of occupational disease, claiming that she was subjected to "a constant physical stressful condition" because of the pressure to exceed her goals and be promoted. Appellant added that her work efforts provoked a "bombardment of sexual harassment" and "intimidating actions" by her supervisors because she would not consent to "improper, immoral, or illegal actions," which had been going on nonstop for six years.

In support of her claim, appellant submitted her Equal Employment Opportunity (EEO) complaint, noting that she was removed from an acting supervisory position without a legitimate reason; her personal statement describing the stressful situation at work, and medical evidence from Dr. Praful Mehta, Board-certified in internal medicine. The employing establishment controverted the claim and submitted personal statements from seven coworkers and supervisors refuting appellant's allegations.

On December 13, 1993 the Office denied the claim on the grounds that the evidence was insufficient to establish that the alleged harassment or discrimination occurred as alleged. Appellant timely requested an oral hearing, which was held on October 26, 1994. She testified that she started work as a city letter carrier and then began managerial training in 1987 as an acting supervisor. After appellant declined to talk about the assistant manager's questions which she found offensive, the hearing representative asked appellant to submit a narrative statement describing specific incidents which she felt caused her emotional condition.

Appellant noted that she asked another supervisor to keep confidential her request for a transfer, but he did not. Appellant also testified that "everybody knew" that she spent too much time in the assistant manager's office at meetings and thus was unable to complete her assigned

work. She added that coworkers made fun of her by making remarks. Appellant stated that she was removed as acting supervisor in May 1993 after being moved around to different stations a lot. She indicated that another assistant manager asked her to inflate production figures and made her take a full hour for lunch.

Dr. Hedy Rutman, a clinical psychologist who treated appellant, testified that her diagnosis was adjustment disorder with depressed mood caused by sexual harassment on the job. She described one incident when the assistant manager told appellant he had videotaped her sitting with her legs apart and would tell her husband about the tape if she ever revealed what “sexual remarks and overtures he had made to her.”

Dr. Rutman stated that appellant had difficulty talking about specific incidents but related one where the manager had grabbed her breast and noted that appellant had told her that the manager called appellant into his office numerous times and asked about her sex life. Dr. Rutman added that she had administered no psychological testing.

Appellant submitted a November 17, 1994 narrative describing sexual and discriminatory factors, which was prepared by her representative at the hearing. Appellant also submitted statements from coworkers corroborating her allegations that office meetings with the assistant manager were overlong and that she had asked coworkers to page her so that she could leave the manager’s office.

In a decision dated January 5, 1995, the hearing representative denied the claim on the grounds that appellant had failed to establish that she sustained a psychiatric condition in the performance of duty. The hearing representative noted that appellant was either unable or unwilling to provide the specific information necessary to establish her allegations of sexual harassment and that the few incidents she described were not supported by corroborating evidence and were negated by the individuals involved.

On January 2, 1996 appellant requested reconsideration and submitted medical records and evaluations. On January 17, 1996 the Office denied appellant’s request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of the prior decision.

The Board finds that the Office acted within its discretion in denying reconsideration of the hearing representative’s decision dated January 5, 1995.¹

Section 8128(a) of the Federal Employees’ Compensation Act² provides for review of an award for or against payment of compensation. Section 10.138, the statute’s implementing regulation, requires a written request by a claimant seeking review that specifies the issues which

¹ The Board’s scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on April 23, 1996, the only decision before the Board is the January 17, 1996 denial of appellant’s request for review, a nonmerit decision.

² 5 U.S.C. § 8101 *et seq.* (1974); 5 U.S.C. § 8128(a).

the claimant wishes the Office to review and the reasons why the decision should be changed.³ Thus, a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.⁴

Section 10.138(b)(2) provides that if a request for review of the merits of the claim does not meet at least one of the three requirements, the Office will deny the request without reviewing the merits.⁵ If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to re-open a case for further consideration of the merits pursuant to section 8128.⁶ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts.⁷

In this case, appellant submitted with her request for reconsideration handwritten medical notes dated August 30, September 22, October 18, and November 8, 1993 as well as a December 29, 1993 medical report from Dr. Rutman. The medical notes were previously considered by the hearing representative, and in any event do not address the issue of specific work factors that caused appellant's emotional condition. Therefore, these notes are insufficient to require the Office to reopen appellant's claim.

Dr. Rutman's report generally alleged sexual harassment by appellant's manager, including falsifying her time records, changing her work schedule without sufficient notice, and engaging in "other more subtle discriminations," and concluded that these conditions produced severe mental and emotional stress for appellant. However, Dr. Rutman's report fails to support or corroborate the accuracy or validity of appellant's complaints against the employing establishment. In fact, the allegations in this report are as vague and unsubstantiated as appellant's initial charges of sexual harassment, as noted in the resolution of her EEO complaint.⁸ Therefore, the Board finds that Dr. Rutman's report is similarly insufficient to require reopening of appellant's claim for merit review.⁹

³ 20 C.F.R. § 10.138(b)(1); *John F. Critz*, 44 ECAB 788, 793 (1993).

⁴ 20 C.F.R. § 10.138 (b)(1)(i)-(iii); *Willie H. Walker, Jr.*, 45 ECAB 126, 131 (1993).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *John E. Watson*, 44 ECAB 612, 614 (1993).

⁷ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁸ See *Chester R. Henderson*, 42 ECAB 352, 359 (1991) (finding that appellant's mere allegation of harassment, without any witness' statement in support, was insufficient to establish that actual harassment had occurred).

⁹ See *Karen E. Humphrey*, 44 ECAB 908, 910 (1993) (finding that the record established that charges of sexual harassment were unfounded).

Appellant's request for reconsideration was timely filed on January 2, 1996, within one year of the January 5, 1995 decision. However, despite being informed by both the Office and the hearing representative of the need to submit a detailed narrative statement of specific incidents, appellant failed to submit sufficient evidence demonstrating that work factors covered under the Act caused her emotional condition.¹⁰

Thus, appellant has not shown that the Office erroneously applied or interpreted a point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.¹¹

The January 17, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 1, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).

¹¹ See *Norman W. Hanson*, 45 ECAB 430, 435 (1994) (finding that the Office properly declined to reopen a claim because appellant presented no new and relevant evidence).