

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. ALDRIDGE and U.S. POSTAL SERVICE,
POST OFFICE, Marietta, GA

*Docket No. 03-1585; Submitted on the Record;
Issued December 18, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On July 27, 2000 appellant, then a 38-year-old city carrier, filed an occupational claim alleging that he sustained mental stress due to violent harassment in the workplace by a supervisor, Dave Watts; failure by management to provide adequate work support; wrongful denial of annual and sick leave; improper requests for medical documentation; wrongful criticism and disciplinary action; and unjustified denial of access to union representation. By decision dated April 4, 2001, the Office denied appellant's claim, stating that appellant did not establish that he sustained an emotional condition while in the performance of duty, as alleged.

By letter dated May 2, 2001, appellant requested an oral hearing before an Office hearing representative, which was held on November 27, 2001. At the hearing, appellant noted that the notice of the hearing he received was dated October 29, 2001 and, therefore, he did not have the full 30 days to prepare for the hearing, to which he was entitled.

By decision dated February 20, 2002, the Office hearing representative affirmed the Office's April 4, 2001 decision.

By letter dated February 12, 2003, appellant requested that he be granted an opportunity for another hearing because he did not have the full 30 days to prepare for the hearing held on November 27, 2001 and he felt that the Office hearing representative improperly handled the hearing by showing bias towards him.

By letter dated February 15, 2003, appellant requested reconsideration of the Office's decision and reiterated the basis for his emotional claim. Appellant stated that Mr. Watts had been his supervisor for nine months, that his mail route was overburdened and on July 15, 2000 when he completed the Form 3966 to request additional assistance, Mr. Watts disapproved it. He

stated that Mr. Watts became upset and “demanded” that he come to his office. Appellant stated that he refused appellant’s request for a shop steward and spoke abusively and threatened him in his office. Further, when appellant subsequently requested sick leave due to his emotional condition, it was refused because management told him that he did not have adequate medical documentation. Appellant stated that management improperly stopped his pay for a period of time. He discussed other incidents concerning himself and his wife, which he felt constituted verbal and physical abuse by Mr. Ward. Appellant indicated that his settlement of an Equal Employment Opportunity (EEO) claim did not show that the employing establishment committed no wrongdoing.

Appellant submitted additional evidence consisting of an EEO agreement between him, management and the union dated October 18, 2000, Memorandum of Understanding between the employing establishment and the union describing, in part, the rights of letter carriers, an attorney fee agreement between appellant and his attorney dated October 4, 2000 and a statement dated September 22, 2000 from appellant’s wife describing an incident where Mr. Watts pushed her against the copier at work

By decision dated March 14, 2003, the Office denied appellant’s request for reconsideration.¹

The Board finds that the Office properly refused to reopen appellant’s case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

The Board’s jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed the appeal with the Board on June 9, 2003, the only decision before the Board is the Office’s March 14, 2003 decision denying appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees’ Compensation Act, the Office’s regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).⁴

¹ The Office stated that appellant’s request for another hearing would be reviewed by the Branch of Hearings and Review for a response on that particular request.

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

³ Section 10.606(b)(2)(i-iii).

⁴ Section 10.608(a).

In this case, appellant submitted a reconsideration request in which he repeated his claim that he sustained an emotional condition because Mr. Watts, a supervisor, verbally and physically harassed him and his wife, provided inadequate work support, wrongly denied leave requests, improperly disciplined him and unjustifiably denied him access to union representation. However, appellant has already made these arguments and the Office has previously considered and denied them. The October 18, 2000 EEO settlement is not determinative of the merits of appellant's claim because it was made without prejudice to either party. It is, therefore, not relevant to appellant's claim.⁵ The Memorandum of Understanding generally describes the rights of carriers but is not relevant to the issue of whether Mr. Watts harassed appellant and acted unreasonably or abusively to him.⁶ Appellant's attorney fee agreement dated October 4, 2000 and his wife's September 22, 2002 statement of a negative incident at work with Mr. Watts are not relevant to the specific circumstances of appellant's claim.

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument or present relevant and pertinent new evidence not previously considered by the Office, appellant has failed to establish his claim. The Office properly denied his request for reconsideration.

The March 14, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 18, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Jesse J. Starcher*, 51 ECAB 314, 317-18 (2000).

⁶ *Robert Knoke*, 51 ECAB 319, 320-21 (2000).