

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**VERA D. BLANCHARD, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Liberty, TX, Employer**

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**Docket No. 05-1499  
Issued: December 9, 2005**

*Appearances:*  
*Vera D. Blanchard, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 7, 2005 appellant filed a timely appeal from the Office of Workers Compensation Programs' nonmerit decision dated April 8, 2005, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The most recent merit decision is the Office's February 10, 2004 denial of modification of a decision denying her occupational disease claim. Because more than one year has elapsed between that merit decision of the Office and the filing of this appeal on July 7, 2005, the Board lacks jurisdiction to review the merits of this claim.

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On December 3, 2002 appellant, then a 68-year-old rural letter carrier, filed an occupational disease claim alleging that Polly Heath, the postmaster, caused her to experience

stress, depression, nose bleeds, stomach and heart problems. She also indicated that she was in fear of retaliation. Appellant first became aware of her condition on December 28, 1999 and realized that it was caused or created by her employment on September 26, 2002. She did not stop work.<sup>1</sup>

In support of her claim, appellant submitted a statement describing her work circumstances. She alleged that the postmaster's behavior was inappropriate, causing heart and stomach problems that led to her termination. She also submitted statements from Anne Warren and Sandra Green, coworkers, who advised that the postmaster had tantrums and made everyone uneasy. She also submitted medical documentation.

By letter dated December 24, 2002, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail how the injury occurred and to provide dates of her medical examinations and treatment, a history of injury given to her physician, a detailed description of any findings and a physician's opinion as to how the reported work incidents caused the claimed injury. The Office allotted appellant 30 days to submit the requested information.

On December 26, 2002 the Office received a December 19, 2002 statement from Pifer Lucas, a coworker, who indicated that the postmaster was unprofessional in her demeanor towards employees.

By decision dated January 24, 2003, the Office denied appellant's claim, finding that she did not establish a compensable employment factor.

Appellant requested reconsideration on September 17, 2003 and submitted copies of previously submitted documents, medical records and a statement from Carl Graham, a coworker, who described the postmaster's actions toward Mr. Lucas. She also enclosed a March 1, 2003 statement from P.A. Sayal, the manger of human resources, who advised that there was no report regarding an investigation into the actions of the postmaster and Mr. Lucas.

In a December 22, 2003 decision, the Office denied modification of the January 24, 2003 decision. The Office found that appellant had not established any compensable factors of employment.

Appellant requested reconsideration on January 7, 2004. She alleged that the postmaster's behavior caused her to experience severe stomach pain and heart problems from stress. She alleged that the postmaster's behavior included temper tantrums, screaming, foot stomping, fist shaking, threatening and carrying out retaliation. Appellant listed several instances of interactions with the postmaster, which she considered stress inducing. On September 18, 1998 the postmaster allegedly "whited" out a notation made by appellant in the remarks column regarding her time sheet. On August 2, 1999 the postmaster requested her edit sheet on a short time frame as retaliation. The postmaster allegedly became very angry when she

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<sup>1</sup> Appellant has a separate claim for a traumatic injury, in which the Office accepted aggravation of cervical disc disease and subsequently expanded to include permanent aggravation of cervical disc disease and spinal stenosis. The Office authorized a cervical laminectomy, which was performed on April 1, 2003.

was corrected by appellant regarding the union contract and when appellant requested a conflict resolution team to resolve a dispute over a mail count. Appellant also alleged that she was subsequently terminated because of her heart problems, which she believed were caused by stress, which prevented her from working.

Additional evidence was submitted by appellant, including medical reports, notes regarding an installation ceremony, articles and newspaper clippings, trip notes and edit sheets. The Office also received a January 28, 2004 statement from Michelle Stevenson, a supervisor, who indicated that she had no knowledge of appellant and advised that the previous supervisor had retired.

By decision dated February 10, 2004, the Office denied modification of the December 22, 2003 decision. The Office advised appellant an employee's reaction to administrative or personnel matters were not generally covered under the Federal Employees' Compensation Act, absent evidence of error or abuse. The Office found that appellant had not established any compensable factors of employment.

Appellant requested reconsideration on February 6, 2005. She submitted additional evidence, including copies of previously received documents and medical reports, a note from the present postmaster, Ralph Linkenhoffer, indicating that the previous postmaster and Mr. Lucas were no longer employed with the employing establishment, documentation regarding appellant's steward application and a September 6, 1999 statement from an individual named Dorene, regarding casing mail. She also included an additional statement from Ms. Warren regarding the deliveries on September 28, 1999 and casing. In addition, she included a copy of an October 21, 2002 letter that she had written to her physician describing her postmaster's behavior and in which she alleged that the postmaster was removed from the employing establishment when she threw a pair of scissors. These statements did not contain any specific instances of the postmaster's behavior towards appellant.

She also submitted numerous handwritten notes dating from April 25, 1998 to October 22, 1999 describing the postmaster's behavior that she believed contributed to her stressful condition, including an incident in which the postmaster screamed at her on January 14, 1999 retaliation by the postmaster in March 1999 for filing a grievance, an instance on September 27, 1999 when the postmaster called appellant at home about her route and mail count and an incident on September 17, 1999 in which the postmaster allegedly spoke to her in a stern and rude tone of voice.

By decision dated April 8, 2005, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence. The Office determined that the evidence was cumulative in nature and, thus, it was insufficient to warrant review of its prior decision.

### LEGAL PRECEDENT

Under section 8128(a) of the Act,<sup>2</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”<sup>3</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on February 6, 2005.

In support of her claim she submitted additional evidence, which included numerous handwritten notes dating from April 25, 1998 to October 22, 1999 describing the postmaster's behavior that she believed contributed to her stress. They included specific instances in which the postmaster screamed at her on January 14, 1999, a description of how the postmaster responded to her in March 1999 when appellant informed her she might file a grievance, an instance on September 27, 1999 in which the postmaster called appellant at home about her route and mail count and an incident on September 17, 1999 in which the postmaster allegedly spoke to her in a stern and rude tone of voice. The Board finds that this evidence is relevant and pertinent and was not previously considered. Handwritten notes describe the postmaster's actions that appellant alleges led to her emotional condition. The requirement for reopening a claim for merit review does not include the requirement that a claimant submit all evidence necessary to discharge her burden of proof. The evidence only need to be relevant and not previously considered by the Office.<sup>5</sup> Consequently, the evidence from appellant is considered to be new and relevant evidence and sufficient to warrant further merit review.

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> See *Sydney W. Anderson*, 53 ECAB 347 (2002).

The Board, therefore, finds that appellant's request for reconsideration contains relevant and pertinent new evidence not previously considered by the Office and, thus, meets the third standard for obtaining a merit review of her case.

**CONCLUSION**

The Board finds that the Office improperly denied appellant's request for further review of the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 8, 2005 is set aside and the case is remanded for further action consistent with this decision.

Issued: December 9, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board