United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 08-2537**
	)	**Issued: April 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Northridge, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 29, 2008 appellant filed a timely appeal from the August 20, 2008 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review that denial. The Board also has jurisdiction to review the Office hearing representative's May 15, 2008 merit decision affirming the denial of compensation beginning July 25, 2000 and a July 30, 2008 merit decision, denying modification of that decision.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on or about July 25, 2000, causing disability for work; and (2) whether the Office properly denied her August 7, 2008 request for reconsideration.

FACTUAL HISTORY

On February 20, 1996 appellant, then a 31-year-old letter carrier, filed a claim alleging that she sustained an emotional condition in the performance of duty: "My symptoms are a

result of the harassment and disparate treatment that I was forced to endure on a daily basis as a handicapped employee and then later as an injured employee at the Northridge Post Office." She first became aware of her illness on March 17, 1995. Appellant was released to return to work without limitations on January 22, 1996.

The Office denied appellant's claim on September 19, 1996. On June 12, 1997 an Office hearing representative affirmed. The Office denied reconsideration on January 15, 1999, which this Board affirmed.[1]

An April 26, 2001 decision from the Equal Employment Opportunity Commission (EEOC) found that the postmaster's harassment of appellant over a two-year period created a hostile and offensive work environment. Finding that the postmaster treated appellant disfavorably because she was disabled, the EEOC held that the agency was liable for harassment on the basis of disability, commencing in March 1996.

On January 12, 2002 appellant claimed compensation for a new injury on or about July 25, 2000:

> "On July 25, 2000 I clocked off and let my supervisor know that I did not know if or when I would be returning to work. I was excused from work by Dr. Kamat due to stress. When the day came to return to work October 1, 2000 I made the decision not to return, because I did not feel mentally capable of doing so. It was not until I saw Dr. Zackler on October 9, 2001 that a diagnosis of my condition was made, along with its relationship to my employment at the postal service."

Appellant added: "I worked at the Northridge Post Office from December 30, 1989 until July 25, 2000, when I had this overwhelming need to leave in the middle of my workday. I have not been able to return." In a statement supporting her new claim, appellant explained that she returned to work in April 1997 but never felt "quite right." On July 25, 2000 she stated, the overwhelming need she had to run from her workplace since she returned in April 1997 "finally won out." Appellant informed her supervisor that she was leaving and did not know if or when she would return.

The customer service supervisor controverted appellant's new claim, as follows:

> "On July 25, 2000 [appellant] was working in the capacity of an [a]cting [s]upervisor at the Porter Ranch Station of the [employing establishment]. [She] entered the [m]ain [employing establishment] in the afternoon of this date and told me that she was quitting. [Appellant] told me that she had skills that she could use outside of the [p]ostal [s]ervice to gain employment. [She] did not tell me that she was leaving with the uncertainty of when she would return as she states…. [Appellant] did not give me a reason for quitting, she had spoke of quitting before and I had been previously … informed that [she] had quit before and then returned to the employment of the [p]ostal [s]ervice. This was prior to my assignment to the [employing establishment.]"

[1] Docket No. 99-1057 (issued August 16, 2000).

On January 24, 2002 appellant filed a claim for compensation for wage loss beginning July 26, 2000.

On August 28, 2000 Dr. Kiran J. Kamat, a psychiatrist, reported that appellant was unable to work since July 25, 2000 "secondary to overwhelming stress at work." In an undated Family and Medical Leave Act certification, signed by appellant on August 28, 2000, Dr. Kamat indicated that on approximately July 25, 2000 she had excessive job-related stress, anxiety, extreme restlessness, poor sleep, inability to focus and tearfulness.

On December 3, 2001 Dr. Lester M. Zackler, a psychiatrist, noted his extensive evaluation of appellant and his review of her medical and occupational records. He stated that she was unable to work from July 2000 until her retirement:

> "[Appellant] is unable to function as a postal worker within the federal system. She has developed intense phobic avoidance of the workplace due to her belief that she will be subjected to ongoing harassment and discrimination. [Appellant] becomes increasingly anxious, tremulous and diaphoretic as she considers the possibility of returning to work as a postal employee. These symptoms are an intense reaction to her occupational experiences. The allegations of harassment have been investigated and found to be valid.
>
> "[Appellant] has the capacity to engage in occupational duties that are compatible with the physical impairment resulting from her cerebral palsy. However, she cannot return to working as a postal worker due to the severe emotional damages caused by the occupational harassment and discrimination. As a consequence, the period of inability to function occupationally from July 2000 until her formal retirement, should be considered related to her underlying psychiatric condition and she should be compensated for that loss of income. It is my opinion that [she] is eligible for medical retirement from the postal service because of the persistence and chronicity of the Adjustment Disorder with Mixed Emotional Features that occurred as a result of occupational stressors. [Appellant] continues to be intensely apprehensive of returning to work and is at risk of having a reoccurrence of a major depressive episode that was initially precipitated by work-related stressors."

On September 17, 2002 Dr. S. Michael Sasser, a psychiatrist and Office referral physician, concluded that appellant's diagnosed emotional condition was due to the occupational exposure described in the Office's statement of accepted facts. He stated that disability as a result of her industrial injury extended from December 1995 until April 1997.

Appellant told Dr. Sasser that she returned to a light-duty clerical position in April 1997 because of a back problem. She did not carry letters but occasionally pulled mail and worked in this capacity until June or July 2000. During this period, appellant had occasional difficulties with her direct supervisor and finally got into an argument over a memorandum that, while insignificant in nature, "was a culmination of multiple issues that had been going on for the three[-]year period." Dr. Sasser stated that the supervisor was found to have been irresponsible processing appellant's work slips and workers' compensation paperwork and other factors that

were important to her. During the course of the disagreement with her supervisor, Dr. Sasser stated that, appellant became emotionally upset and started screaming because he was treating her as if she was stupid. The apprehension she continued to feel in the workplace accelerated and she left her work situation.

On November 27, 2002 the Office accepted appellant's initial claim for adjustment disorder with mixed emotional features and paid compensation for periods of disability through April 25, 1997.

On December 18, 2002 appellant filed another claim for compensation for wage loss beginning July 2000.

In a decision dated August 13, 2007, the Office denied appellant's claim for compensation beginning July 25, 2000. It addressed the reports of Dr. Kamat and Dr. Zackler but found no indication that appellant suffered a recurrence of disability related to her original injury.

Appellant requested an oral hearing before an Office hearing representative. In a March 20, 2008 report, Michael F. O'Connell, Ph.D., a clinical psychologist, offered an opinion on her ability to function from July 25 through September 20, 2000. Dr. O'Connell stated that he had no contact with appellant during this time and was basing his opinion on a review of materials and information she provided. He noted, in particular, Dr. Zackler's December 3, 2001 report and testimony before the EEOC. Dr. O'Connell noted that the administrative law judge's finding that harassing conduct at work was severe and pervasive, occurring on virtually a daily basis for over one year. He stated that on July 25, 2000 appellant and her supervisor had a heated argument over a misplaced memorandum. As the argument escalated, he stated that, appellant was overwhelmed by memories of previous incidents involving the supervisor and she fled the workplace, feeling that she had to "run for her life." Dr. O'Connell explained that this incident worsened appellant's accepted condition:

> "One of the previously accepted, compensable factors of employment of this claim involved repeated incidents of [the supervisor] misplacing [appellant's] payroll documents resulting in dire financial consequences for her. In my opinion, the materials that I have reviewed (including Dr. Zackler's extensive testimony) combined with the information provided by [appellant] make it clear that she suffered a material worsening in her [a]djustment [d]isorder as a consequence of employment factors including harassment in the workplace. Her description of her increased anxiety symptoms (an indication of a worsening of her [a]djustment [d]isorder) appears credible and consistent with the diagnostic impression provided by Dr. Zackler."

In a decision dated May 15, 2008, following a telephonic hearing on March 13, 2008, the Office hearing representative affirmed the denial of appellant's claim for wage loss. The hearing representative found that, because her statements and the medical evidence failed to establish the specific cause of her disability for the period claimed, appellant failed to establish that she sustained a recurrence of disability beginning July 25, 2000 causally related to the accepted work injury.

Appellant requested reconsideration. She explained that on July 25, 2000, during a normal conversation with her supervisor, she became agitated and the conversation escalated into an argument. The conversation was no different than a hundred others they had, "but for some reason on that day I suddenly felt as though I were back in 1995 and unable to function." Appellant left work and did not return.

In a decision dated July 30, 2008, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It reviewed Dr. O'Connell's report but found no contemporaneous medical documents supporting that appellant was disabled for the period claimed due to the accepted work factors.

On August 7, 2008 appellant requested reconsideration, contending that the reconsideration examiner did not consider all the medical documentation in her file. She submitted copies of Dr. Zackler's December 3, 2001 report and Dr. O'Connell's March 20, 2008 report.[2]

In a decision dated August 20, 2008, the Office denied appellant's August 7, 2008 request for reconsideration. It found that the medical evidence submitted was previously considered. Because appellant submitted no new relevant and pertinent evidence or argument, the Office concluded that her request was insufficient to warrant a review of the merits of her case.

On appeal, appellant reiterated that the Office failed to consider all the medical evidence in its July 30, 2008 decision, in particular Dr. Zackler's three-page report and Dr. Kamat's Family and Medical Leave Act certification.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[4]

To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a

[2] Appellant also submitted a duplicate of Dr. Zackler's December 3, 2001 report but dated November 26, 2002.

[3] 5 U.S.C. § 8102(a).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[5]

ANALYSIS -- ISSUE 1

On January 12, 2002 appellant claimed compensation for a new injury on or about July 25, 2000. When she filed this claim, she did not attribute her new injury or disability to any specific incident at work. Rather, appellant described an overwhelming need to leave in the middle of the workday. She never felt "quite right" after returning to work in April 1997 and on July 25, 2000 this feeling she had to run from her workplace "finally won out."

Because appellant did not implicate any new or intervening factors of employment, the Office adjudicated her as a recurrence.[6] However, she subsequently advised that, on July 25, 2000, she got into an argument with her direct supervisor over a misplaced memorandum. Appellant became emotionally upset and started screaming, contending that her supervisor was treating her as if she were stupid. Overwhelmed by memories of previous incidents involving the supervisor, she left work and did not return.

The Board notes, however, that appellant's depiction of an argument with her supervisor on July 25, 2000 is not supported by the contemporaneous evidence. She did not mention an argument over a memorandum when she filed her claim on January 12, 2002. Appellant never mentioned it to the customer service supervisor who spoke to her on July 25, 2000. To the contrary, the customer service supervisor reported that appellant gave no reason for quitting work that day, only that she had skills she could use outside the postal service to gain employment. Moreover, appellant never told her physicians about the incident either. Dr. Kamat, the psychiatrist who saw her on August 28, 2000, never mentioned an argument that caused her to scream and run away from the workplace. He only vaguely referenced overwhelming stress at work and excessive job-related stress.

In a December 3, 2001 report, Dr. Zackler, another psychiatrist, stated that appellant last worked for the postal service in July 2000. However, he did not relate that she told him about the misplaced memorandum or of an argument with her direct supervisor on July 25, 2000. The contemporaneous medical evidence does not support appellant's allegations. The first mention of the July 25, 2000 incident is in the September 17, 2002 report of Dr. Sasser, the Office referral psychiatrist. This had been almost 26 months after the fact. Appellant repeated this incident to Dr. O'Connell, the licensed clinical psychologist, on March 20, 2008. It had been Dr. O'Connell who reported the additional piece of information that the memorandum had been misplaced. Appellant's failure to mention this incident when she filed her new injury claim on January 12, 2002 raises a substantial question about the validity of the claim.

[5] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

[6] A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 20 C.F.R. § 10.5(x) (1999).

Appellant's late and unconfirmed account of a heated argument with her direct supervisor over a misplaced memorandum on July 25, 2000, together with the lack of a history of such incident in the contemporaneous medical records, introduces too much inconsistency to the record. The Board finds that there are such inconsistencies in her account of a new injury on July 25, 2000 as to cast serious doubt on the validity of the claim. The Board finds that appellant has not met her burden of proof to establish that she sustained an injury as alleged. The Board will affirm the Office decisions denying compensation beginning July 25, 2000.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[7] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[8]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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.[9]

An application for reconsideration must be sent within one year of the date of the Office decision, for which review is sought.[10] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[11]

ANALYSIS -- ISSUE 2

Appellant filed her August 7, 2008 request for reconsideration within one year of the Office's last merit decision on July 30, 2008. Her request is therefore timely. The question is whether appellant's request meets at least one of the three standards for obtaining a merit review of her case.

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.605 (1999).

[9] *Id*. at § 10.606.

[10] *Id*. at § 10.607(a).

[11] *Id*. at § 10.608.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law. She argued, instead, that the Office failed to consider all the medical documentation in her file and specifically. The Board has carefully reviewed all of the Office's merit decisions on her January 12, 2002 new injury claim. In its August 13, 2007 decision, the Office considered the reports of Dr. Sasser, Dr. Kamat, and Dr. Zackler. Having once considered these reports, it was not required to consider them all over again in subsequent merit reviews. In its July 30, 2008 decision, the Office considered the merits of Dr. O'Connell's report for the first time because it now appeared that he was a qualified physician. The fact that the Office did not reconsider the same reports from Dr. Sasser, Dr. Kamat and Dr. Zackler does not mean the Office overlooked that evidence in denying her claim. The Board thus finds no validity to appellant's argument.

To support her request for reconsideration, appellant submitted copies of Dr. Zackler's December 3, 2001 report and Dr. O'Connell's March 20, 2008 report. But this was not relevant and pertinent new evidence not previously considered by the Office. As the Board just explained, the Office previously considered this evidence.

Because appellant's August 7, 2008 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of her case, the Board finds that the Office properly denied her request. The Board will affirm the Office's August 20, 2008 decision.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a new injury in the performance of duty on or about July 25, 2000, causing disability for work. The Board also finds that the Office properly denied appellant's August 7, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 20, July 30 and May 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 2, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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