

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE COLEMAN and U.S. POSTAL SERVICE,
BROOK ROAD POST OFFICE, Richmond, Va.

*Docket No. 96-750; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion under section 8128(a) of the Act by refusing to reopen appellant's case for merit review.

On September 16, 1993 appellant, then a 44-year-old clerk, alleged that she sustained an emotional condition in the performance of duty on or before August 31, 1993. She attributed her condition to alleged harassment from her supervisor, Mr. Nash, who spoke with appellant on several dates in June and August 1993 regarding taking excessive breaks and sleeping at her desk. Appellant explained that her drowsiness and need for breaks related to medication for bilateral wrist conditions which she asserted were work related.¹

An August 5, 1993 dispensary authorization form signed by Mr. Nash and an occupational health nurse noted that it was "up to management" if appellant should work restricted duty, as the medical unit could not "authorize time off floor due to med[ication]. [Appellant] to take med[ication] so as not to interfere with work."

In an October 20, 1993 statement, the employing establishment controverted appellant's claim, noting that appellant sometimes spent as long as 70 minutes on unauthorized breaks, "slept much of the time when she was in the unit and was non-productive." The employing establishment noted asking other supervisors to witness appellant asleep at her desk before Mr. Nash approached her.

Appellant submitted employing establishment dispensary notes from 1977 to September 1993, addressing her bilateral wrist conditions and noting drowsiness in August 1993. A September 2, 1993 report from Dr. W. M. Belle, an attending internist, diagnosed an acute stress

¹ The record indicates that appellant had claims accepted for bilateral wrist conditions. However, those decisions, and any compensation or medical benefits provided are not at issue on the present appeal.

reaction and left carpal tunnel syndrome. Dr. Banerje Koduru, an attending psychiatrist, submitted a September 29, 1993 report noting appellant's account of Mr. Nash giving her a "hard time" regarding drowsiness at work. He diagnosed an adjustment disorder with mixed emotional features, and possible major depression.²

By decision dated May 26, 1994, the Office denied appellant's claim on the grounds that appellant had not established that the claimed condition arose in the performance of duty. The Office accepted that Mr. Nash reminded appellant of assigned break periods and observed her sleeping at her desk, and that these factors were in the performance of duty. However, the Office found that appellant had not submitted evidence indicating that she sustained an emotional condition as a result of those factors. The Office further found that appellant had not substantiated her allegations of harassment.

Appellant disagreed with this decision, and requested a review of the written record by a representative of the Office's Branch of Hearings and Review. She submitted a March 8, 1994 report from Dr. Koduru addressing her carpal tunnel syndrome and recommending alterations to her shift schedule to accommodate her drowsiness. She also submitted a June 22, 1994 report from Dr. Koduru noting that Mr. Nash spoke with appellant about her drowsiness and taking excessive breaks on June 8, August 6 and 18, 1993, and that this "monitoring" caused appellant's anxiety.³

By decision dated December 16 and finalized December 19, 1994, an Office hearing representative affirmed the Office's May 26, 1994 decision, finding that appellant had not alleged a compensable factor of employment under the Federal Employees' Compensation Act. The hearing representative further found that appellant had not substantiated her allegations of harassment, that Mr. Nash's discussions with her were reasonable administrative actions, and that no error or abuse had been shown with regard to those administrative actions.

Appellant disagreed with this decision and by a March 16, 1995 letter requested reconsideration. In support of her request, appellant submitted copies of Office forms and decisions previously of record.

By decision dated April 13, 1995, the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant a merit review as she had merely submitted duplicates of evidence previously of record.

Appellant disagreed with this decision and in a May 7, 1995 letter again requested reconsideration. Appellant also submitted a return to work slip and form report dated May 9,

² The Office advised appellant by December 16, 1993 and March 22, 1994 letters of the type of medical and factual evidence needed to establish her claim, including a rationalized report from her attending physician explaining how specific work factors would cause the claimed emotional condition.

³ In an August 31, 1994 letter, Mr. Nash, appellant's supervisor, stated that appellant slept "for a major portion of the night," and would become enraged when approached about her sleeping on the job. He noted that appellant took unauthorized breaks, and resisted his instructions about when to take meal and other breaks. Appellant responded in a September 21, 1994 letter that Mr. Nash harassed a number of employees and that she had never become angry when he spoke to her.

1995, two photographs of her left wrist, copies of an Office decision, and a letter previously of record and a March 17, 1992 physical therapy note.

By decision dated October 31, 1995, the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant a merit review. The Office found that appellant had not submitted relevant new evidence, as her left wrist condition was not at issue.

The Board finds that the Office's refusal to reopen appellant's case for a merit review did not constitute an abuse of discretion under section 8128(a) of the Act.

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.⁴ As appellant filed his appeal with the Board on January 11, 1996, the only decisions properly before the Board are the April 13 and October 31, 1995 decisions denying appellant's request for a merit review.

To require the Office to open a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of the claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed, by showing that the Office erroneously applied or interpreted a point of law, or advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.328(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the three requirements will be denied by the Office without review of the merits of the claim.⁶

The critical issue in this case is whether appellant's claimed emotional condition arose in the performance of duty. In other words, appellant must submit evidence establishing that her claimed emotional condition is causally related to compensable, accepted factors of appellant's federal employment. In order to require a merit review by the Office, appellant must submit evidence, as set forth above, providing new, relevant, pertinent information on this issue. Evidence that does not address the issue involved does not constitute a basis for reopening a case.⁷ In her March 16 and May 7, 1995 requests for reconsideration, appellant emphasized that the Office accepted bilateral wrist conditions as causally related to factors of her federal employment, and her belief that those conditions caused her to require medication on the days she alleged Mr. Nash harassed her.⁸ However, the cause of appellant's wrist conditions during

⁴ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 20 C.F.R. § 10.138(b)(1).

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁸ The claims concerning the wrist conditions are not before the Board on the present appeal.

any alleged harassment is irrelevant to the performance of duty issue in the emotional condition claim.

In support of her March 16, 1995 request for reconsideration, appellant submitted copies of Office forms and decisions previously of record. The Board has held that 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.⁹ In support of her May 7, 1995 request for reconsideration, appellant submitted documents concerning her wrist conditions. These documents do not present new, relevant evidence on the critical issue of performance of duty, or support that the Office erroneously interpreted a point of law. Therefore, the evidence submitted in support of appellant's request for reconsideration did not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.¹⁰

Appellant has not established that the Office abused its discretion 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 decisions of the Office of Workers' Compensation Programs dated October 31 and April 13, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 10, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *Gaetan F. Valenza*, 35 ECAB 763 (1984).