

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY A. DAVIS and U.S. POSTAL SERVICE,  
POST OFFICE, Compton, Calif.

*Docket No. 96-1268; Submitted on the Record;  
Issued February 13, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on January 18, 1996.

On June 28, 1993 appellant, then a 38-year-old postal clerk, filed a notice of traumatic injury alleging that she suffered stress due to harassment resulting in a miscarriage, severe headache, blurred vision and pain in the right fingers and wrist on May 25, 1993 in the performance of duty.

By letter dated August 3, 1993, the Office requested medical evidence from appellant which addressed causal relationship. Appellant was given 30 days to respond.

On August 23, 1993 Dr. John Vanderhulst, a family practitioner, indicated that appellant suffered from extreme stress directly connected to the workplace which resulted in severe headaches. He also diagnosed tenosynovitis to the right wrist and blurred vision.

In a letter received September 3, 1993, appellant wrote that she began experiencing cramping in her right fingers and throbbing pain in her fingers and wrist when a new office procedure was implemented in August 1989. She also noted that her vision began to blur. Appellant indicated that harassment began in September 1992 from her supervisor, Joe Harris. She stated that she was hurt by his incredulous reaction to an audit indicating that she made no mistakes. Appellant also indicated that additional duties were unreasonably imposed upon her which were beyond her capabilities. She stated that on June 10, 1993 her eyes began to blur and she noticed pain in her right wrist and hand. Appellant attributed that pain in her right wrist, fingers and hand to years of repetitive motion in the performance of duty. She attributed a miscarriage, severe headaches and blurred vision to harassment from her supervisor, Joe Harris.

On September 17, 1993 Dr. Vanderhulst diagnosed headaches, empty sella syndrome and right flank/hip pain and checked “yes” to indicate that the diagnosed conditions were caused or aggravated by appellant’s employment.

By decision dated October 19, 1993, the Office rejected the claim on the basis that appellant failed to establish that an injury occurred in the performance of duty.

Appellant subsequently requested an oral hearing. Appellant testified on June 29, 1994 that she experienced stress from unreasonable changes in her work duties and that her supervisor was hostile. She stated that she experienced headaches and depression due to changes in her job duties. Appellant reiterated her complaints in a chronology of events she submitted to the hearing officer.

Appellant also submitted evidence from a complaint filed with the Equal Employment Opportunity Commission addressing the alleged harassment by her supervisor, Joe Harris.

In addition, appellant submitted a June 21, 1994 report from Dr. Susan Skinner, a Board-certified psychiatrist and neurologist, diagnosing tension or migraine headaches. Appellant also submitted illegible reports from Dr. Jill Hom, an ophthalmologist and a report from Dr. Robert Sundstrom, an orthopedic surgeon, indicating that he performed a right hand carpal metacarpal joint bossing, joints two and three.

Appellant also submitted several award certificates and letters as evidence of her exemplary job performance and good character.

Appellant next submitted progress notes for treatment she received by Dr. Vanderhulst from July 21, 1993 through January 6, 1994 where he noted treatment for pain in the right upper extremity, empty sella syndrome and fibromyalgia. Dr. Vanderhulst consulted with Dr. Khin Khin Gyi, a neurologist, who noted depression and chronic tension headaches. A magnetic resonance imaging (MRI) scan conducted by a Dr. Marwan Saab, a Board-certified radiologist, indicated a partially empty sella. Dr. Christine Phan, a physician Board-certified in physical medicine and rehabilitation, indicated that nerve conduction studies were normal.

Finally, appellant submitted progress notes for treatment rendered by Guy Bacon and Carolyn Crawford, both individuals with masters degrees in social work, for depression stemming from workplace harassment.

In a decision dated December 13, 1994, the Office hearing representative found that appellant failed to establish an emotional condition related to a compensable factor of employment. The hearing representative found that appellant failed to establish that she was harassed by her supervisor, Joe Harris. She further found that changes in appellant’s duties as a timekeeper, changes in her duties after her maternity leave and the removal of records and plants from her office were administrative in nature and, therefore, noncompensable factors of employment absent evidence of error or abuse. The hearing representative then found that there was no evidence of error or abuse and denied the emotional condition claim. The Office hearing representative also rejected appellant’s claim for a lump on her right hand and pain in her wrist

and finger because the record was devoid of medical evidence relating these conditions to factors of her employment.

On December 7, 1995 appellant requested reconsideration. In support, she submitted a September 20, 1995 report from Dr. Skinner. Dr. Skinner found some effacement of the spinal cord at the C3-4 level. Dr. Skinner indicated that she could not state whether the pain in appellant's hand was related to her cervical disc problem, but that she believed it was not. Appellant also submitted an MRI scan conducted by a Dr. C. Holmes, indicating that there was a posterior right lateral osteophyte at C3-4 along with posterior bulging disc impinging upon the thecal sac and effacing the spinal cord. Appellant also submitted a report from Dr. Daniel J. Won, a Board-certified neurologist, diagnosing C3-4 disc disease. Dr. Won indicated that he could not address the relationship between the injury or disease, neck pain and bilateral arm pain and the condition diagnosed. Finally, appellant submitted a nerve conduction study performed by Dr. Chan noting mild peripheral neuropathy.

In a decision dated January 18, 1996, the Office denied the application for review on the grounds that the evidence submitted was irrelevant and immaterial and was not sufficient to warrant review.

The only decisions before the Board on this appeal is that of the Office dated January 18, 1996 in which it declined to reopen appellant's case on the merits as she failed to submit new, relevant and pertinent evidence. Since more than one year elapsed from the date of issuance of the Office's October 19, 1993 and December 13, 1994 merit decisions to the date of the filing of appellant's appeal on April 30, 1996 the Board lacks jurisdiction to review those decisions.<sup>1</sup>

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on January 18, 1996.

Under section 8128(a) of the Act,<sup>2</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;  
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(1).

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.<sup>4</sup>

In the instant case, appellant failed to submit evidence relevant to establishing her claim that she sustained an emotional condition in the performance of duty or that she injured her right hand and wrist in the performance of duty. The reports submitted by Drs. Skinner, a Board-certified psychiatrist and neurologist, Dr. Won, a Board-certified neurologist and Dr. C. Holmes addressed an injury to appellant's cervical spine at C3-4. Inasmuch as appellant did not file a claim for this injury and these physicians did not relate this injury to the conditions or diseases for which appellant filed her claim, this medical evidence is irrelevant. Although the report of Dr. Chan, a physician Board-certified in physical medicine and rehabilitation, addressed appellant's hand condition, it failed to address whether a causal relationship existed between the condition and appellant's employment. Therefore, it is insufficient to require the Office to reopen appellant's claim for review of the merits. The evidence submitted by appellant is insufficient to require the Office to reopen her claim for further merit review.

As appellant failed to submit any new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is hereby affirmed.

Dated, Washington, D.C.  
February 13, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.138(b)(2).