

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELVEN D. CHRISTIAN and DEPARTMENT OF THE AIR FORCE,
AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, Okla.

*Docket No. 96-1237; Submitted on the Record;
Issued May 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further merit review of his case.

On October 28, 1993 appellant, then a 49-year-old heat treater, filed an occupational disease claim alleging that he sustained an emotional condition which he attributed to "performance of day-to-day duties" and harassment by his supervisor and coworkers.

In a statement of accepted facts dated August 28, 1994, the Office accepted that appellant's assigned job duties were compensable factors of employment, but determined that his allegations of harassment were either unsubstantiated or were related to administrative actions of the employing establishment, for which no error or abuse had been shown.

By decision dated September 30, 1994, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an emotional condition in the performance of duty causally related to compensable factors of his employment.

In a letter dated December 1, 1994, appellant, through his representative, requested reconsideration of the denial of his claim.

By decision dated December 28, 1994, the Office denied modification of its December 30, 1994 decision.

By letter dated December 14, 1995, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated April 18, 1995, Dr. J.A. Montero, a Board-certified psychiatrist, provided a history of appellant's condition and the results of a mental status examination. He related appellant's complaints regarding the behavior of coworkers and harassment by his supervisor. Dr. Montero diagnosed major depressive disorder, chronic and stated, "It is this

examiner's opinion that [appellant's] psychiatric illness is directly and causally related to his employment at the [employing establishment].”

By decision dated January 3, 1996, the Office denied appellant's request for further merit review.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further merit review.

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.¹ As appellant filed his appeal with the Board on March 19, 1996, the only decision properly before the Board is the Office's January 3, 1996 decision, denying his request for reconsideration. The Board has no jurisdiction to consider the Office's December 28 or September 30, 1994 decisions, denying appellant's claim for compensation benefits.²

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In this case, the Office accepted that appellant's specific job duties were compensable factors of employment, for which appellant might be entitled to compensation benefits if such factors were supported by the medical evidence. The Office also determined, however, that appellant's allegations of harassment were not substantiated by the evidence of record and were related to administrative functions of the employing establishment for which no error or abuse had been established. Appellant submitted an April 18, 1995 report from Dr. Montero, a Board-certified psychiatrist, who provided a history of appellant's condition and the results of a mental status examination. He related appellant's complaints regarding the behavior of coworkers and harassment from his supervisor. Dr. Montero diagnosed major depressive disorder, chronic and stated, “It is this examiner's opinion that [appellant's] psychiatric illness is directly and causally related to his employment at the [employing establishment].” However, he provided no rationalized medical opinion addressing those specific work incidents accepted by the Office as compensable factors of employment. As this report did not address those factors, which were found compensable, it does not constitute relevant and pertinent evidence not previously considered by the Office and the Office properly denied appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ 20 C.F.R. § 10.138(b)(2).

The January 3, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 26, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member