U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. SCHOENICK and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, Wis.

Docket No. 97-801; Oral Argument Held March 10, 1998;
Issued November 3, 1998

Appearances: *Patricia A. Schoenick, pro se*; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs, by decisions dated October 7 and June 28, 1996, abused its discretion in refusing to reopen appellant's claim for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128.

On July 27, 1992 appellant filed an occupational disease claim alleging that she sustained post-traumatic stress disorder causally related to factors of her federal employment.[1] Appellant attributed her condition to a stressful work environment created by her supervisor, Mr. John Fisher. Appellant related that Mr. Fisher behaved towards her in a hostile manner, sent her home early when there was work remaining, criticized her work, treated her differently from her coworkers, told her she had to stand to case mail, and did not provide her with copies of form 3996 which she submitted to inform management that she would need overtime to complete her route. Appellant further related that on March 31, 1992, Mr. Fisher yelled at her and told her she should not be at work because she was not on the overtime list. Appellant stated that Mr. Fisher's actions on that date caused her to collapse and necessitated treatment at a hospital.

By decision dated September 2, 1993, the Office accepted appellant's claim for mild generalized anxiety disorder but found that the issue of whether appellant had any disability therefrom was unresolved. By decision dated November 10, 1993, the Office denied appellant's claim on the grounds that she had no disability causally related to her March 31, 1992 employment injury. By decision dated October 14, 1994, an Office hearing representative set

[1] Appellant initially filed a traumatic injury claim for an incident occurring on March 31, 1992 which she claimed caused stress. The Office denied appellant's claim by decision dated July 2, 1992. By decision dated January 27, 1993, an Office hearing representative set aside the Office's July 2, 1992 decision and remanded the case for inclusion in the development of her occupational disease claim.

aside the Office's September 2 and November 10, 1993 decisions and denied appellant's claim on the grounds that she had not established any compensable factors of employment.

On October 10, 1995 appellant requested reconsideration. In support of her request, appellant submitted witness statements and medical reports which duplicated evidence currently of record. She further submitted evidence regarding the adjudication of her complaint before the Equal Employment Opportunity Commission (EEOC) including a letter dated March 6, 1996 from her attorney requesting reconsideration of a January 30, 1996 EEOC decision. Appellant additionally submitted an October 10, 1995 addendum to a medical report from Dr. George Teter and three new witness statements. In a statement dated September 26, 1995, Mr. John Ver Haagh described Mr. Fisher's treatment of appellant as "harassing and condescending." In a statement dated October 7, 1995, Mr. John Ulik related that Mr. Fisher shouted at appellant, demanded outrageous performance from her and behaved in an unprofessional manner. Mr. Ulik further described what he heard took place between appellant and Mr. Fisher on March 31, 1992. In a statement dated October 11, 1995, Mr. Mike Kosmider stated that he heard Mr. Fisher shouting at appellant and described the course of events on the date appellant went to the hospital.

By decision dated June 28, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the prior decision. In the accompanying memorandum to the Director, incorporated by reference, the Office found that the evidence was "essentially duplicative of the evidence previously considered."

Appellant again requested reconsideration and resubmitted medical reports and witness statements currently of record. She also submitted two new witness statements from Mr. Dennis Knepper and Mr. Ron Kania. In a statement dated August 21, 1996, Mr. Knepper related that Mr. Fisher told her appellant was "not worth the money" to bring in to work. In a statement dated September 11, 1996, Mr. Kania described appellant's problems receiving a Form 3996 from Mr. Fisher, that he told her she had to prove herself in a January 1992 meeting, and would not let her sit down to case mail. Appellant further submitted a November 28, 1984 grievance settlement regarding another employing establishment employee which held that it was in error for the employee to receive a letter of warning for a mistake in estimation on a Form 3996.

By decision dated October 7, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not relevant and thus insufficient to warrant a review of the prior decision.

The Board finds that the Office, in its June 28, 1996 decision, abused its discretion by refusing to reopen appellant's case for a review of the merits pursuant to 5 U.S.C. § 8128.

The only decisions over which the Board has jurisdiction are the June 28 and October 7, 1996 decisions which denied appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated October 14,

1994 and January 8, 1997, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the decision dated October 14, 1994.[2]

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his 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 and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law, or
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> "(ii) Advancing a point of law or fact not previously considered by the Office, or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[3]

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.[4] Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.[5] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[6]

In support of her 1995 request for reconsideration, appellant submitted additional witness statements. The majority of the witness statements submitted duplicate evidence already in the record, and thus did not constitute relevant and probative new evidence sufficient to require reopening of her claim for merit review. However, appellant also submitted statements from Mr. Ver Haagh, Mr. Kosmider, and Mr. Ulik which were not previously of record.

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge her burden of proof.[7] The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[8] If the Office should determine that the new evidence submitted lacks substantive

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[2] *See* 20 C.F.R. §§ 501.2(c), 501.3(d).

[3] 20 C.F.R. § 10.138(b)(1).

[4] *See* 20 C.F.R. § 10.138(b)(2).

[5] *Daniel Deparini*, 44 ECAB 657 (1993).

[6] *Id.*

[7] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[8] *See* 20 C.F.R. § 10.138(b).

probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.[9]

Appellant submitted witness statements not previously of record from coworkers Mr. Ulik, Mr. Kosmider and Mr. Ver Haag. While the record contains prior statements from all three coworkers, Mr. Ulik and Mr. Ver Haag included in their statements information relevant to appellant's claim and not previously discussed. In his statement dated October 7, 1995, Mr. Ulik specifically described the conversation which occurred between Mr. Fisher and appellant on March 31, 1992. In Mr. Ver Haag's September 26, 1995 statement, he supported appellant's allegation that Mr. Fisher sent her home when there remained work to be done at the facility. Thus, the statements by Mr. Ulik and Mr. Ver Haag constitute relevant and pertinent evidence not previously considered by the Office and are sufficient to require the Office to conduct a merit review of the case. In its June 28, 1996 decision, the Office found that the evidence submitted by appellant was "essentially duplicative." This is not the proper basis for determining whether a merit review is warranted in a particular case. Evidence submitted in support of reconsideration is not weighed to determine whether or not the majority of such evidence is cumulative, duplicative or repetitious. If a claimant submits evidence which is relevant and not previously of record then, regardless of the number of additional reports or documents submitted which may be of no evidentiary value, the Office is nonetheless required to conduct a merit review of the case. As noted above, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.[10] Accordingly, the Office improperly refused to review the instant case on the merits.

In view of the foregoing, the case shall be remanded to the Office to issue a decision on the merits of the case.[11]

[9] *Dennis J. Lasanen*, 41 ECAB 933 (1990).

[10] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[11] In view of the Board's finding regarding the Office's June 28, 1996 decision, the issue of whether the Office, in its October 7, 1996 decision, abused its discretion in denying merit review under section 8128 is moot.

The decisions of the Office of Workers' Compensation Programs dated October 7 and June 28, 1996 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
November 3, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member