

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES A. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, San Luis Obispo, Calif.

*Docket No. 97-397; Submitted on the Record;  
Issued October 13, 1998*

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DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On June 21, 1996 appellant, then a 51-year-old postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on May 29, 1996 he realized that he sustained stress, hypertension, cardiac irregularities and depression due to factors of his federal employment. Appellant stopped work on May 11, 1996 and returned to work on June 18, 1996.

By decision dated August 19, 1996, the Office denied appellant's claim on the grounds that he did not establish fact of injury. Appellant requested reconsideration and submitted additional evidence. By decision dated September 20, 1996, the Office denied appellant's request for reconsideration. In the accompanying memorandum to the Director, incorporated by reference, the Office found that appellant had not alleged a compensable factor of employment. Appellant requested reconsideration in a letter dated October 1, 1996. By decision dated October 17, 1996, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was cumulative and irrelevant and thus insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed

by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>4</sup>

Appellant attributed his emotional condition to the stress and anxiety he felt upon being told by his supervisor that he was to receive window training for a second time. However, the Board has held that an employee's reaction to being reassigned for training results from the employee's feelings of job insecurity or frustration at not being permitted to hold a particular position and is not compensable.<sup>5</sup>

Appellant further contended that his assignment to window training for a second time constituted harassment on the part of the employing establishment because employees with less seniority were not assigned to window training. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that the harassment or discrimination did, in fact, occur. In the present case, appellant's allegations of harassment are not supported by any substantial, reliable or probative factual evidence of record and thus he has not established a compensable factor of employment.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration under 5 U.S.C. § 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Gracie A. Richardson*, 42 ECAB 850 (1991).

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

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

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”<sup>6</sup>

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>7</sup> 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.<sup>8</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>9</sup>

In the present case, the Office denied appellant’s claim on the grounds that he did not establish a compensable employment factor. In support of his request for reconsideration, appellant submitted a statement dated October 1, 1996. Appellant related that he completed window training around May 1995 and worked on the window until notified that he had failed his window examination. Appellant stated that one year later he received notification of his assignment to window training for a second time. Appellant attributed his mental anguish and chest pains to the “decision to put me back through window training.”

Appellant’s October 1, 1996 statement does not constitute relevant and probative evidence sufficient to warrant a merit review by the Office. Appellant’s discussion of his prior window experience is not relevant to the threshold issue in the present case, which is whether his notification that he was to receive window training for a second time constituted a compensable factor of employment. The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

The rest of appellant’s letter is similar to his previous statements, which were considered by the Office and thus duplicates evidence already of record. The Board has held that the submission of evidence, which repeats of duplicates evidence already contained in the case record does not constitute a basis for reopening a case.<sup>11</sup>

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<sup>6</sup> 20 C.F.R. § 10.138(b)(1).

<sup>7</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>8</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>11</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, he has not established that the Office abused its discretion in denying his request for review under section 8128 of the Act.

The decisions of the Office of Workers' Compensation Programs dated October 17, September 20 and August 19, 1996 are hereby affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member