

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL K. KADOYA and GENERAL SERVICES ADMINISTRATION,
FEDERAL SUPPLY SERVICE FIELD OFFICE, Bell, CA

*Docket No. 98-89; Submitted on the Record;
Issued December 15, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretionary authority in refusing to reopen appellant's claim for merit review on January 16 and July 10, 1997.

The Board has carefully reviewed the record evidence and finds that the Office did abuse its discretion by denying merit review on January 16, 1997.

Section 8128(a) of the Federal Employees' Compensation Act¹ provides for review of an award for or against payment of compensation. Section 10.138(b)(1) of the Office's federal regulations provides, in pertinent part, that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issues within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed.²

With the written request, the claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) of the implementing regulations provides that any application for review 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

¹ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8128(a).

² See *Vincente P. Taimanglo*, 45 ECAB 504 (1994). While no special form is required, Office procedures provide that a reconsideration request be in writing, identify the decision and specific issues for which reconsideration is sought and be accompanied by relevant and pertinent new evidence or argument not previously considered.

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

In this case, appellant's notice of occupational disease, filed on October 23, 1992 and claiming compensation for an anxiety disorder, was denied by the Office on March 23, 1993 on the grounds that appellant, a supervisory quality assurance specialist, had failed to establish that he sustained an injury in the performance of duty.

Appellant requested reconsideration, which was denied on June 4, 1993 on the grounds that the April 5, 1993 report from Dr. Jack Boghosian, a licensed clinical psychologist, was insufficient to establish that appellant's anxiety disorder was caused by work factors. Therefore, the Office denied modification of its prior decision. Appellant again requested reconsideration, pointing out that he had not been furnished with a copy of his supervisor's response to his narrative statement,⁵ as requested; that the Office had failed to contact any of the seven individuals who could corroborate his allegations; that overwork was the cause of his stressful condition, not his reaction to his performance rating; that his transfer to a nonsupervisory position was voluntary, not involuntary; and that Dr. Boghosian agreed with appellant's identification of the work factors that caused his condition. On September 9, 1993 the Office denied reconsideration on the grounds that appellant had failed to establish that his emotional condition was sustained in the performance of duty. Appellant's January 19, 1994 request for reconsideration was denied on February 24, 1994 on the grounds that the evidence he submitted in support thereof was insufficient to warrant modification. Appellant requested reconsideration on February 11, 1995 and submitted statements from three individuals attesting to appellant's assertions and proving that appellant's supervisor "outright lied" and repeatedly erred and acted abusively in carrying out his duties. The Office again denied modification of its prior decision, noting that the witnesses' statements failed to prove that appellant's supervisor acted abusively in changing the established practices of an office or making administrative decisions with which his employees disagreed. On February 26, 1996 appellant requested reconsideration on the grounds that his stress condition was aggravated by overwork, caused by his supervisor's extensive use of government facilities to conduct personal business. Appellant submitted two witnesses' statements, copies of personal faxes his supervisor received on the job and his June 13, 1995 letter, requesting a meeting with the claims examiner to discuss his case. On April 11, 1996 the Office again denied modification on the grounds that the record evidence failed to support appellant's assertions that his work unit was subjected to excessive scrutiny by his supervisor or that he was forced to work 10 hours a day by his supervisor.

Appellant again requested reconsideration on December 31, 1996. The Office denied this request for reconsideration on January 16, 1997 as insufficient to warrant review of the prior decision.

The Board finds that the Office abused its discretion in denying appellant's December 31, 1996 request for reconsideration.⁶

⁵ On July 1, 1993 the Office provided appellant with a copy of his supervisor's response to his claim and noted that the March 23, 1993 memorandum was not considered in the June 4, 1993 decision.

⁶ The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed his notice of appeal on October 8, 1997 the only decisions before the Board are the January 16 and July 10, 1997 denials of appellant's request for review, nonmerit decisions.

In support of his December 31, 1996 request for reconsideration, appellant submitted a statement dated December 30, 1996, from Arthur N. Minassian. In this statement Mr. Minassian stated as follows:

“I have been employed by GSA for 33 years. For 26 years I worked in the Testing and Analysis Branch, 3 years as the Chief. I am currently the Chief, Quality Assurance Branch for Region 9.

“I was assigned to my current position to replace Mr. Shah. Mr. Shah had to be removed as the QA Branch Chief and permanently reassigned due to his controversial management style in general and his unrelenting harsh treatment of [appellant] in particular. The following facts demonstrate that [appellant’s] condition, which had been caused by unreasonable demands imposed on the job by his boss at the time, was most likely work related.

“Mr. Shah denied QAS certifications, for no reason other than his personal dislike of the individuals concerned. Once I took over, I rectified this situation by granting certification to those rightfully recommended by [appellant].

“Mr. Shah targeted several of [appellant’s] QAS’s as being poor performers and subjected them to closer scrutiny. For the record, those so targeted were successful performers, are still employed by GSA in their same capacities and some are even outstanding performers. The fact that Mr. Shah erred and forced [appellant] to take unwarranted actions against them caused [appellant] to suffer undue stress in the line of duty.

“[Appellant’s] office in Bell, CA has always had more suppliers/contracts/area/activity/workload than any other in Region 9. Time is always of the essence, so any added duties/assignments/responsibilities obviously adds to the daily pressures faced by the supervisor there previously the Bell Office had two and at one time three supervisors). Because the added duties/assignments/responsibilities arbitrarily imposed by Mr. Shah against [appellant] were oftentimes petty and because Mr. Shah refused to correspondingly add to [appellant’s] available resources, [he] suffered undue stress in the performance of his duties.

“Once I took over as the QA Branch Chief, I discovered [appellant] had everything well in hand and could find nothing to warrant the close scrutiny that Mr. Shah had subjected the Bell Office to. I, therefore, rescinded all the unnecessary duties/assignments/responsibilities, which required [appellant] to work countless hours on his own time. I also noted that Mr. Shah treated the Bell Office much more harshly than any other group in the QA Branch and expected [appellant] to comply with his every demand. By his actions, Mr. Shah gave [appellant] no support whatsoever and caused [appellant] to suffer greatly in the performance of his duties”

In summary, appellant was required upon reconsideration to produce new and relevant evidence showing that he was overworked because of his regular or specially assigned duties and

that this overwork caused his anxiety disorder; or that his previous supervisor acted with error or abuse towards appellant in the performance of his administrative role. The evidence appellant submitted with his December 31, 1996 reconsideration request was relevant to these issues. While Mr. Minassian was not an “eyewitness” to the alleged events, as Mr. Shah’s successor as Chief of the Region 9 Quality Assurance Branch, he had stated familiarity with the individuals involved, their job duties and past work performance. Given his access to information regarding the events in question as Mr. Shah’s successor, Mr. Minassian’s opinion regarding whether appellant was overworked, or whether appellant was treated abusively by Mr. Shah is new and relevant.

Thus, appellant has submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office abused its discretion by denying merit review on January 16, 1997. After such further development of the record as necessary, the Office shall conduct a merit review and issue an appropriate decision.⁷

The January 16 and July 10, 1997 decisions of the Office of Workers’ Compensation Programs are hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
December 15, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ In view of the Board’s findings with respect of the January 16, 1997 reconsideration decision, discussion of the July 10, 1997 decision is deemed moot.