

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TYRUS P. TUCKER and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Detroit, Mich.

*Docket No. 97-201; Submitted on the Record;  
Issued January 27, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

This is the second appeal in this case.<sup>1</sup> By decision and order dated June 12, 1996, the Board affirmed the Office's August 18, 1993 decision in which the Office determined that appellant had failed to establish that he sustained an emotional condition in the performance of duty causally related to factors of his federal employment. The facts of this case are more fully set forth in the Board's July 12, 1996 decision and are herein incorporated by reference.

By letter dated July 31, 1996, appellant requested reconsideration of the denial of his claim.

In support of his request for reconsideration, appellant submitted additional evidence.

Appellant submitted a copy of a July 20, 1990 employing establishment investigative memorandum which was previously submitted and considered by the Office and the Board.

In notes dated February 14 and 28, and May 17, 1994, a physician related that appellant felt depressed and attributed his condition to being accused of assaulting a coworker. The physician did not provide a medical opinion as to the cause of the depression.

In a copy of a medical report dated June 14, 1994, Dr. A. Husain, a psychiatrist, diagnosed major depression but gave no opinion as to the cause of the condition.

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<sup>1</sup> See Docket No. 94-1671.

In notes dated July 26, 1994, a social worker described an individual psychotherapy session with appellant.<sup>2</sup>

Appellant submitted a copy of a motion for a new trial dated March 7, 1995 regarding a city case in which he had been found guilty of battery.

Appellant submitted a transcript of a motion hearing held on April 12, 1995 regarding a state case against appellant for assault and battery of Monica Lenart, a coworker. In this transcript the court noted that the case would be dismissed after notice had been given to Ms. Lenart.

Appellant also submitted a copy of a transcript of a motion hearing held June 21, 1995. The purpose of the hearing was to set a new date to give notice to Ms. Lenart that the assault and battery case against appellant would be dismissed.

By decision dated August 12, 1996, the Office denied appellant's request for further merit review of his claim on the grounds that the evidence submitted was irrelevant and immaterial and not sufficient to warrant review of the prior decision.<sup>3</sup>

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.<sup>4</sup> As noted above, the Board has previously affirmed the last merit decision in this case, the Office's August 18, 1993 decision. As appellant filed his appeal with the Board on October 1, 1996 the only decision properly before the Board is the Office's August 12, 1996 decision denying appellant's request for reconsideration.<sup>5</sup>

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a

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<sup>2</sup> The Board notes that a social worker is not a "physician" as defined in the Federal Employees' Compensation Act. 5 U.S.C. § 8101(2) provides that the term "physician" includes surgeons, podiatrists, dentists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.

<sup>3</sup> The Board notes that subsequent to the Office's August 12, 1996 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

<sup>4</sup> 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

<sup>5</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

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

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.<sup>7</sup>

In this case, appellant submitted various documents regarding city and state legal proceedings involving charges of assault and battery against Ms. Lenart. However, in its June 12, 1996 decision which affirmed the Office's August 18, 1993 decision, the Board found that appellant's emotional reaction to being arrested and prosecuted for the assault and battery of Ms. Lenart bore insufficient relationship to his regular or specially assigned duties and was therefore not deemed a compensable factor of employment. Therefore, the documents submitted by appellant concerning the assault and battery charges do not constitute relevant and pertinent evidence not previously considered by the Office.

Regarding the medical evidence submitted by appellant in his request for reconsideration, Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.<sup>8</sup> However, the Board notes that none of the medical evidence submitted contains a rationalized medical opinion addressing the cause of appellant's claimed emotional condition.

As appellant failed to submit relevant and pertinent evidence not previously considered by the Office, a point of law or a fact not previously considered by the Office, or evidence that the Office erroneously applied or interpreted a point of law, the Office did not abuse its discretion in denying his request for reconsideration.

The August 12, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
January 27, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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

<sup>8</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).