

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RENEE M. REDD and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS AFFAIRS MEDICAL CENTER, Tuscaloosa, Ala.

*Docket No. 97-421; Submitted on the Record;  
Issued March 4, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On October 16, 1992 appellant, then a 35-year-old personnel clerk, filed an occupational disease claim, alleging that beginning January 24, 1992 she sustained major depression secondary to chronic anxiety, panic disorder, tendinitis and repetitive motion syndrome. Appellant stopped work March 18, 1992. In a supplemental statement appellant listed the following as causative factors of her alleged condition: she had a previously accepted claim for bilateral tendinitis and repetitive motion syndrome and due to physical limitations as a result of those conditions, she was harassed by her supervisors and coworkers; she experienced difficulty in processing her occupational disease claim due to actions by the employing establishment; she was "degraded and demoralized" after filing the workers' compensation claim for her injuries to her arms; she was in constant fear that she would be removed from her position due to her physical limitations; she was denied use of a TENS unit to help control pain by her supervisor, Eloise Prude; her second line supervisor, Mr. Rasco, embarrassed her on her last day of work by telling her to pack her bags in front of other employees.

In a decision dated November 20, 1992, the Office denied appellant's claim on the grounds that her injury did not occur within the performance of duty. By decision dated October 21, 1993, an Office hearing representative affirmed the November 20, 1992 decision of the Office. In a letter dated October 17, 1994, appellant requested reconsideration of her claim. In a decision dated July 8, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review of her claim.

The Board has carefully reviewed the entire record on appeal and finds that this case is not in posture for decision.<sup>1</sup>

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, advancing a point of law or fact not previously considered by the Office, or 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.<sup>2</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>3</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>4</sup>

In the present case, the Office denied appellant's claim for an emotional condition on the grounds that she had failed to establish that any of the identified incidents was either compensable under the Act or arose within the performance of duty. While appellant submitted a number of documents with her request for reconsideration, most of the evidence is either irrelevant to her claim or does not substantiate the incidents she alleged caused her emotional distress. The Board notes that the initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition.<sup>5</sup>

However, appellant did submit some evidence, which is relevant and pertinent to the identified causative factors and which had not been previously reviewed by the Office. Specifically, appellant submitted copies of affidavits prepared in relation to an Equal Employment Opportunity claim she filed. These affidavits address the employing establishment's actions in refusing to carrying over appellant's annual leave during the time she was ill due to bilateral tendinitis. There is also documentation which indicates that the determination of Ms. Prude and Mr. Rasco that appellant could not carry over her leave was later overturned by the District Counsel. Appellant also submitted affidavits that indicated that the employing establishment improperly listed her in an absent without leave (AWOL) status

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<sup>1</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. As appellant filed her appeal with the Board on October 16, 1996, the only decision before the Board is the Office's July 8, 1996 decision; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2). The Board also notes that, although the Office did not act on appellant's motion for reconsideration for over 18 months, this is not a case which requires remand for merit review based on the failure of the Office to quickly process appellant's request for reconsideration. Since appellant did not file a request for reconsideration until the one-year period for seeking merit review of the last merit decision had almost lapsed, appellant was not prejudiced by the Office's delay in acting on her request for reconsideration.

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

<sup>3</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>4</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

although her physical condition claim had been accepted, rather than leaving her in a leave without pay status. The timekeeper for the employing establishment indicated that appellant's supervisors had kept a separate file on her "extended leave" which reflected the AWOL status. This was corroborated by Ms. Prude as well. Therefore, appellant has submitted evidence which is relevant to her claim and, which was not previously considered by the Office. Thus, the Office abused its discretion in denying merit review of her case. The case will be remanded for this purpose.

The decision of the Office of Workers' Compensation Programs dated July 8, 1996 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.  
March 4, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member