

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD R. GUILBEAUX and U.S. POSTAL SERVICE,
POST OFFICE, Port Arthur, TX

*Docket No. 98-220; Submitted on the Record;
Issued November 10, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's requests for reconsideration were insufficient to warrant merit review of the claim.

In the present case, appellant filed a claim alleging that he sustained an emotional condition causally related to harassment from management and coworkers during his federal employment. By decision dated July 19, 1995, the Office denied the claim, finding that appellant had not established a compensable factor of employment and, therefore, had not established an injury in the performance of duty. In a decision dated May 8, 1996, an Office hearing representative affirmed the July 19, 1995 decision.

Appellant submitted four requests for reconsideration. By decisions dated October 17, 1996, February 28, March 25 and August 13, 1997, the Office determined that appellant had not submitted sufficient evidence to warrant merit review of the claim.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on October 15, 1997 the only decisions over which the Board has jurisdiction on this appeal are the October 17, 1996, February 28, March 25 and August 13, 1997 decisions denying his requests for reconsideration.

The Board has reviewed the record and finds that the Office properly determined that appellant's requests for reconsideration were not sufficient to warrant merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may

¹ 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of

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 fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁴

In the present case, appellant's emotional condition claim was denied on the grounds that he had not established a compensable factor of employment. Appellant alleged harassment, as well as error and abuse in administrative actions by the employing establishment.⁵ To require the Office to review the case on its merits, the evidence submitted on reconsideration must be new and relevant to the underlying issues presented. In this case, appellant submitted evidence compiled by the employing establishment regarding delivery time on specific routes. For example, appellant submitted a log sheet dated August 16, 1994, indicating that route 4251 (a route normally carried by appellant) was completed by a D. Kirby in 7.66 hours. While this log sheet appears to be new evidence, it does not constitute relevant evidence as to compensable factors of employment. There is no indication that a factual dispute existed as to whether Mr. Kirby completed the route in less than eight hours. The issue of compensability depends on evidence supporting appellant's allegation of error or abuse; that Mr. Kirby used help to complete the route in less than eight hours, in order to make appellant's performance suffer by comparison. The log sheet itself does not support an argument of error or abuse. Similarly, appellant submitted evidence showing that on March 24, 1995 the route was completed in 6.33 hours, while on November 4, 1995 the total time reported for the route was 9.54. Appellant contends that a coworker was coerced into carrying the route much faster than normal during the March 1995 inspection. The inspection summaries themselves do not, however, support an allegation of error or abuse by the employing establishment.

The Board notes that appellant submitted a June 17, 1996 report from Dr. Ravikumar Kanneganti, a psychiatrist, who had previously opined that appellant's emotional state was aggravated by his employment; moreover, medical evidence on causal relationship is not relevant until a compensable factor of employment has been established.⁶ The Board finds that appellant did not submit new and relevant evidence, nor did he meet any of the requirements of section 10.138. Since he has not met the requirements of section 10.138(b)(1), the Office properly determined that a merit review was unwarranted in this case.

compensation at any time on his own motion or on application).”

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ The Board has held that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment; *see Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

The decisions of the Office of Workers' Compensation Programs dated August 13, March 25 and February 28, 1997 and October 17, 1996 are affirmed.

Dated, Washington, D.C.
November 10, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member