

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ZETTIE LEE GIDDENS and U.S. POSTAL SERVICE,  
SEVENTH STREET POST OFFICE, Oakland, CA

*Docket No. 98-437; Submitted on the Record;  
Issued September 17, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case on the merits.

On October 27, 1995 appellant, then a 45-year-old distribution clerk, filed a notice of occupational disease alleging that she sustained a stress condition, precipitating muscle tension in her neck, back and right side and headaches. Appellant indicated that she did not know when she first became aware of her condition, but related it to factors of her federal employment on October 11, 1995.<sup>1</sup> She attributed her condition to "unfair treatment,"<sup>2</sup> not being trained on new equipment pertinent to duties in the label room, not being allowed to continue working in the label room as she had for eight years and being reassigned to a mailhandling unit.<sup>3</sup>

In a November 9, 1995 letter, Jade Owyong, appellant's immediate supervisor, noted that "stand-up" talks were held regarding the possible closure of the label room on July 16, August 2 and September 11, 1995. She stated that the new label room was to be operational on October 16, 1995 and that appellant was timely provided with training in Windows, Excel, Word

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<sup>1</sup> Appellant also submitted medical evidence. In an October 23, 1995 report, Dr. Roubinian, an attending internist, diagnosed a tension headache due to the employing establishment's "attempt ... to change her job. She is angry at this process." He released appellant to full duty as of October 24, 1995. In a November 16, 1995 note, Dr. C. Romano, an attending internist, indicated that appellant did "not like her new position" at the employing establishment, and had filed a grievance. Appellant was then referred to a psychologist. In a November 21, 1995 slip, Dr. James C. Wilson, an attending clinical psychologist, diagnosed an "adjustment disorder due to stress," and recommended counseling.

<sup>2</sup> Appellant filed an EEO (Equal Employment Opportunity) complaint on October 19, 1995, alleging discrimination based on race, sex, age and physical handicap in her reassignment from the label room to a mailhandler position in September 1995. There is no final decision of record regarding this complaint.

<sup>3</sup> The Office advised appellant by a December 19, 1995 letter of the additional evidence needed to establish her claim, and the deficiencies in the evidence already submitted.

and Data-base, although appellant was frustrated by her poor typing skills. Ms. Owyong noted that possible closure of the label room on Tour 2 was announced on September 26, 1995, appellant was given notification of reassignment on October 2, 1995 and that appellant agreed to reassignment as a mailhandler effective October 28, 1995.<sup>4</sup>

In November 27, 1995 and January 25, 1996 letters, appellant alleged that she and her coworkers in the label room were discriminated against when the unit was reorganized, that she was denied the necessary computer training enabling her to bid for a position in the new, computerized mail room and that the employing establishment violated the union contract by replacing employees with experience and seniority with detail workers. Appellant asserted that the employing establishment discriminated against her on the basis of “race, sex, age and physical handicap” when she was assigned to work as a mailhandler.<sup>5</sup>

By decision dated May 15, 1996 and finalized May 16, 1996, the Office denied appellant’s claim on the grounds that she had failed to establish that she sustained an injury in the performance of duty. The Office accepted as factual that there were three “stand-up discussions” regarding possible closure of the label room, that appellant and her coworkers were reassigned to Tour 3 duty prior to September 26, 1995, that on September 26, 1995 it was announced that the label room would be closed on Tour 2, that Ms. Owyong, told appellant that she would be retrained to use the equipment in the new label room but training was conducted on the new equipment when it was not yet operational and did not involve the full range of computer operations, that duties appellant used to perform were being given to the new label room workers instead, that label room workers were all either on detail or light duty, that appellant filed an Equal Employment Opportunity (EEO) complaint and that appellant accepted reassignment to mail processing effective October 28, 1995. The Office found that none of the incidents constituted a compensable factor of employment. The Office further found that appellant had not substantiated her claims of harassment, discrimination, error or abuse by the employing establishment.

Appellant disagreed with this decision and by September 2, 1996 letter requested reconsideration. In an attached statement, appellant alleged that there was a union-management conspiracy from September 1995 onward against label room employees. She again described her frustration over not being allowed to work in the label room as she had done for eight years, alleged the denial of computer equipment training needed to bid on a label room job and being

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<sup>4</sup> The record contains an October 2, 1995 “notification of change in principle assignment area” from the label room to outgoing distribution. Appellant accepted the assignment and signed the form, noting that she did so “under duress.”

<sup>5</sup> In a January 17, 1996 statement, supervisor Gail Reynolds indicated that appellant had been trained and was performing well as a mailhandler. Appellant submitted February 5 and 6, 1996 statements from coworkers Janice C. Ford, Marion L. Jackson, and Shirley Mahoney, generally supporting appellant’s account of the events surrounding modernization of the mail room and the reassignment of workers.

denied a requested shift schedule change. Appellant also noted that sitting at work produced abdominal pain.<sup>6</sup>

By decision dated October 22, 1996, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that appellant's frustration over not receiving a desired job assignment or being allowed to perform particular tasks, stress over job reassignment, working in a particular location and the administrative actions concerning her reassignment and training were not covered factors of employment.

Appellant disagreed with this decision and requested reconsideration in a May 13, 1997 letter. In her letter, appellant attributed her conditions to frustration from seeing other clerks perform work she would like to do and not being assigned to work in the label room. She also alleged that her mail processing duties caused a worsening of her physical conditions.<sup>7</sup>

Appellant enclosed additional evidence; September 1996 and March 1997 receipts for Prozac; a May 22, 1996 slip diagnosing right epicondylitis, limiting lifting to 10 pounds or less; a December 6, 1996 slip diagnosing "cervical trapezius spasms and epicondylitis and releasing appellant to limited duty December 17, 1996 and to full duty on January 30, 1997; a February 4, 1997 prescription from Dr. F. Bart Edwards, an attending orthopedist, for "custom orthotics" and diagnosing "tendonitis"; a February 24, 1997 slip prescribing "orthotics in shoes"; March 28 and April 15, 1997 receipts for orthotics a May 22, 1997 slip from Dr. Wilson diagnosing an adjustment disorder "secondary to work factors." These documents do not specifically address any alleged factors of employment. Appellant also submitted employing establishment tare weight tickets, one dated August 20, 1996 showing 84 pounds and one dated September 6, 1996 showing 90 pounds.

By decision dated August 11, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was "immaterial," and therefore insufficient to warrant a merit review of the prior decision. The Office found that the evidence submitted did not establish a worsening of her physical conditions, or substantiate any compensable factors of employment prior to May 15, 1996.

The Board finds that the Office did not abuse its discretion by denying appellant's request to reopen her case for a review on the merits.

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<sup>6</sup> Appellant also submitted new medical evidence. In an August 20, 1996 report, Dr. Wilson related appellant's account of frustration over not being assigned to work in the label room, her dislike of current job duties, and being denied computer training she desired. Dr. Wilson diagnosed major depression, moderate to severe, "occupational problem/work stress," noted social stressors of "[s]erious occupational distress," and noted appellant's history of a kidney transplant. Dr. Wilson stated that appellant's condition was "the result of job loss and reassignment," and "changes in the work setting...."

<sup>7</sup> Appellant also alleged that she was informed on May 7, 1997 of a rumor that her employment was to be terminated, causing her additional stress. However, she did not provide any evidence to corroborate the circulation of this rumor.

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 November 10, 1997, the only decision properly before the Board on this appeal is the August 11, 1997 denying appellant's request for a merit review.<sup>8</sup>

To require the Office to open a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of the claim by written request to the Office, identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed, by showing that the Office erroneously applied or interpreted a point of law, or 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.<sup>9</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 three requirements will be denied by the Office without review of the merits of the claim.<sup>10</sup>

In this case, the critical issue is whether appellant established that she sustained an emotional condition or other medical condition causally related to compensable factors of her federal employment. Appellant's claim was denied as she failed to establish a compensable factor of employment. Thus, any evidence appellant submitted accompanying a request or reconsideration must be relevant to establishing a compensable factor of employment and a pathophysiologic link between that factor and the claimed emotional condition.

In her May 13, 1997 letter requesting reconsideration, appellant again attributed her conditions to frustration from not working in a desired position in the label room. This letter is merely repetitive of appellant's assertions previously of record and is therefore insufficient to warrant a merit review of the prior decision.<sup>11</sup>

The additional evidence appellant enclosed was new and therefore the Office exercised its discretion by undertaking a limited review of these documents. However, the diagnosis slips, receipts and tare weight tickets do not address or establish any compensable factor of employment and are therefore irrelevant to the critical issue in the case.

Consequently, as appellant's May 13, 1997 request for reconsideration and the accompanying documents do not assert a novel point of law or fact, contain new, relevant

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<sup>8</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>9</sup> 20 C.F.R. § 10.138(b)(1).

<sup>10</sup> 20 C.F.R. § 10.138(b)(2).

<sup>11</sup> The Board notes that 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, as in this case. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act. *Raymond S. Cordova*, 32 ECAB 1005 (1981).

evidence, or establish that the Office erred in applying or interpreting a point of law, the Office properly denied appellant's request for a merit review.

The decision of the Office of Workers' Compensation Programs dated August 11, 1997 is hereby affirmed.

Dated, Washington, D.C.  
September 17, 1999

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member