

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE R. WOODS and U.S. POSTAL SERVICE,
POST OFFICE, Grand Junction, CO

*Docket No. 98-742; Submitted on the Record;
Issued September 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying a merit review of this claim pursuant to 5 U.S.C. § 8128 (a).

In the present case, appellant, then a 34-year-old supervisor of delivery services, filed a claim in December 1994 alleging that she had sustained an emotional condition which was contributed to by employment stress. Appellant essentially alleged that she had a difficult working relationship with both management and her craft employees. She explained that she tried to establish a good working relationship and rapport with the employing establishment management, but that the other managers had their own agenda and did not develop a good relationship with her. Appellant also alleged that her craft employees did not take instructions from her, were disrespectful and filed grievances and other actions against her. She alleged that changes were made in work duties which she did not find appropriate. Appellant stated that timekeeping duties were taken away from her and carriers were not allowed to pull mail from distribution cases. She also stated that she did not agree with actions that she was assigned to take. Appellant explained that she was told to give a letter of warning to an employee, which she did, but which was ultimately removed at Step 3 of a grievance procedure.

The Office denied appellant's claim on August 18, 1995 on the grounds that she had not established a compensable factor of employment and that her emotional condition was therefore not sustained in the performance of duty. By decision dated August 29, 1996 and finalized on September 3, 1996, an Office hearing representative affirmed the denial of appellant's claim. The Office hearing representative found that part of appellant's claim rested on allegations of criticism of job performance and disciplinary actions taken against her. He noted that assessment of performance, absent error or abuse by the employing establishment was not compensable. The hearing representative also found that factually appellant had not established that she sustained harassment, abuse, discrimination, or any other form of disparate treatment at the hands of her supervisors and/or her subordinates.

On September 3, 1997 appellant requested that the Office reconsider her case. By decision dated September 30, 1997, the Office denied appellant's application for review, without merit review of the claim.

The Board finds that the Office did not abuse its discretion in denying merit review of this claim.

The Board's jurisdiction is limited to review of decisions issued by the Office within one year of the date of the appeal.¹ As the only decision issued by the Office within one year of the appeal was the nonmerit decision issued on September 30, 1997, the Board does not have jurisdiction to review the merits of this claim.

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in the Office's implementing regulations. The Office's regulations at 20 C.F.R. § 10.138(b)(1) provide that a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by 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 three requirements, the Office will deny the application for review without reviewing the merits of the claim.

In the present case, the Office denied appellant's claim because she had not submitted evidence to corroborate her allegations of harassment or of error and abuse on behalf of the employing establishment necessary to establish the compensability of her alleged factors of employment. In support of her request for reconsideration, appellant was therefore required to submit evidence of harassment, or error and abuse on behalf of the employing establishment.

In support of her request for reconsideration appellant reiterated that she had previously submitted statements from coworkers who thought highly of her personality and work skills. Appellant also alleged that her condition was caused by performance of her duties and because of harassment, not due to desire for promotion, transfer, or frustration at not being able to work in a particular environment or to hold a particular position. Finally, appellant stated that she was offering new evidence in support of her claim. She then stated that many employees were now experiencing the same problems she had experienced; that a hearing was to be held on September 10, 1997 concerning harassment at the employing establishment; and that Aspen newspapers had recently run articles concerning harassment and abuse of women at the Aspen Post Office. Appellant did not, however, submit any new documentary evidence in support of her allegations.

The Board finds that the Office did not abuse its discretion in denying merit review of this claim.

¹ 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128(a).

In support of her request for reconsideration appellant reiterated what she believed to be the strengths of her claim. She also alluded to the fact that new evidence in the form of testimony and newspaper articles concerning current employees' difficulties at the employing establishment may soon be available. Appellant did not submit any new evidence in support of her request for reconsideration. She did not put forth any new legal or factual argument in support of her claim. Appellant did not, therefore, meet the requirements that she show that the Office erroneously applied or interpreted a point of law regarding her specific allegations, she did not advance a point of law or fact not previously considered by the Office and she did not submit relevant and pertinent evidence not previously considered by the Office.³ As appellant did not show error in fact or law, did not raise a new point of law or offer new and relevant evidence in support of her claim, the Office did not abuse its discretion by denying merit review of this claim.

The decision of the Office of Workers' Compensation Programs dated September 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ See *Goldie K. Behymer*, 45 ECAB 508 (1994).