

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CANDACE L. MURDOCK and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION, Denver, CO

*Docket No. 98-1897; Submitted on the Record;  
Issued April 13, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

Appellant, then a 47-year-old miscellaneous clerk/assistant, filed a claim for benefits on March 28, 1995, alleging that factors of her employment had caused work-related stress, depression and post-traumatic stress disorder. She asserted that, in addition to her assigned duties, she was required to do other duties without being adequately trained, and that she was required to work overtime and weekends. Appellant additionally alleged that she was subjected to abusive management treatment.

By decision dated November 21, 1995, the Office denied appellant's claim for benefits finding that the evidence of file failed to establish a compensable factor of employment. Specifically, the Office found that the evidence of record was insufficient to make a determination with regards to whether or not the claimed events, incidents or exposures occurred at the times, places and in the manner alleged.

By decision dated January 6, 1997 and finalized January 7, 1997, an Office hearing representative affirmed the November 21, 1995 decision. The Office hearing representative found that none of the claimed events were substantiated as factual as there was insufficient supporting evidence corroborating appellant's accounts of the alleged incidents.

By letter dated January 7, 1998, appellant, through her attorney, requested reconsideration and set forth several legal arguments.

By decision dated February 10, 1998, the Office denied reconsideration on the grounds that the evidence submitted was of a repetitious irrelevant nature and therefore insufficient to warrant a merit review of the case.

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>1</sup> As appellant filed her appeal with the Board on May 12, 1998, the only decision properly before the Board is the February 10, 1998 denial of merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.<sup>3</sup>

In her February 9, 1998 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. In support of her reconsideration request, appellant asserted that an error was made on the part of the hearing representative. She alleged that harmful errors of procedure were made as insufficient weight was accorded to her allegations pertaining to the alleged harassment of the employing establishment. This contention, in and of itself, is insufficient to warrant a merit review by the Office. Appellant asserted that the hearing representative erred in failing to apply a four part test utilized in determining the issue of persecution. This contention is without reasonable color of validity to warrant further merit review. She alleged that she did not receive adequate counseling during the development of her claim. This assertion, however, has nothing to do with appellant's stress claim. Appellant asserted that the employing establishment committed willful knowing and deliberate actions which violate law and regulation in the federal workplace. She alleged that similarly situated persons have committed suicide to permanently escape similar abuse and noted that one coworker successfully committed suicide in 1988 and another coworker has been subjected to a 24-hour suicide watch since March 1995. However, those incidents are not relevant to appellant's stress claim as they have bearing on appellant's allegations or capacity to perform her job duties. Moreover, appellant's statements concerning the employing establishment's alleged intimidation and harassment, without any corroborating evidence, constitute unsubstantiated allegations. Moreover, as appellant failed to provide any specific details or specific accusations against a named supervisory official(s), the truth or validity of the allegations of harassment can not be established. She asserted that the employing establishment knew of her physical limitations and the refusal to reasonably accommodate her known handicaps was discriminatory as they knowingly and willfully coerced her to abandon her livelihood to protect her health. Although appellant provides examples of how she believes management the actions of management displayed a callous disregard for the health and safety of their employees, without any supporting factual or medical documentation to support this allegation, it is not enough to

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

warrant merit review. She additionally references a December 15, 1997 investigation conducted by Robert Calvert, Investigator for the Office of Special Counsel, United States Department of Justice, but fails to provide a copy of such investigation saying that the matter is currently in litigation.

Along with her reconsideration request, appellant submitted copies of the evidence which resulted in the approval of her disability retirement, an amended report of Equal Employment Opportunity Counseling and an amended complaint of discrimination, and copies of her complaint and reply to the Merit System Protection Board. This evidence lacks probative value and therefore does not require that the Office reopen the case.

As appellant's reconsideration request did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the request.

The decision of the Office of Workers' Compensation Programs dated February 10, 1998 is affirmed.

Dated, Washington, D.C.  
April 13, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member