

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT J. DeCARLO and U.S. POSTAL SERVICE,
POST OFFICE, Norristown, PA

*Docket No. 99-445; Submitted on the Record;
Issued July 6, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

On March 12, 1997 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his emotional condition had worsened as a result of employment-related stress and harassment he encountered while in the performance of duty. He ceased working on January 7, 1997.¹ Appellant described the nature of his condition as stress-related schizoaffective disorder and he identified January 8, 1997 as the date he first realized his illness was caused or aggravated by his employment.

In support of his claim, appellant submitted several reports from his treating psychiatrist, Dr. B. Kenneth Nelson. In a letter dated January 10, 1997, Dr. Nelson advised that appellant had recently been hospitalized for psychiatric treatment and that he was currently disabled from work. In a subsequent letter dated February 7, 1997, he indicated that appellant remained disabled from work due to an acute exacerbation of his psychiatric condition. Dr. Nelson expressed the opinion that appellant's preexisting condition of schizoaffective disorder was seriously worsened by "harassment and retaliation by management and coworkers." In a May 11, 1997 report, he provided a history of treatment dating back to August 1992 and he discussed recent employment incidents in December 1996 and January 1997 which he attributed to appellant's worsening condition. Dr. Nelson concluded that appellant's psychiatric condition rendered him permanently disabled from returning to work at the employing establishment.

Appellant provided a statement dated May 2, 1997 wherein he described a series of events that occurred during the period December 1996 through January 1997 which allegedly exacerbated his preexisting emotional condition. He explained that in early December 1996 he had an adverse reaction to the various prescription drugs he had been taking. The combination

¹ Appellant subsequently retired on disability effective April 12, 1997.

of medications purportedly caused appellant to become more depressed, confused, angry and impulsive. Appellant stated that, while suffering from the ill effects of the various medications, he was repeatedly harassed by a number of coworkers.² He also acknowledged that during this same period he was disciplined by management on at least three occasions for disruptive behavior in the workplace.³ However, appellant explained that his behavior, which management perceived as improper conduct, was in fact a medical condition resulting from the combination of harassment, improper medication and work-related stress.

In a decision dated October 9, 1997, the Office denied appellant's claim on the basis that he failed to establish that his injury occurred in the performance of duty. The Office explained that appellant failed to implicate or substantiate any compensable employment factors.

On February 16, 1998 appellant's counsel filed a request for reconsideration accompanied by additional medical evidence. By decision dated June 1, 1998, the Office denied appellant's request for reconsideration without reaching the merits of his claim. The Office explained that the evidence submitted in support of the request for review was of an immaterial nature and, therefore, insufficient to warrant review of the October 9, 1997 decision denying compensation. Appellant's counsel subsequently filed an appeal with the Board on November 12, 1998.

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.⁴ As appellant filed his appeal with the Board on November 12, 1998, the Board lacks jurisdiction to review the Office's merit decision dated October 9, 1997. Consequently, the only decision properly before the Board is the Office's June 1, 1998 decision denying appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for a merit review under 20 C.F.R. § 10.138.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may 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 a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.138(b)(2) provides that, when an application

² He explained that at least two coworkers claimed to have had sexual relations with his wife. When he brought the matter to his supervisor's attention, appellant was reportedly told that there was nothing management could do about the situation.

³ In one instance, appellant argued with his supervisor and ultimately "slammed the door." On another occasion, he expressed his desire to blowup the employing establishment. And in the most recent incident, which occurred on January 6, 1997, appellant indicated that he used profanity during a conversation with a supervisor concerning appellant's availability for overtime work.

⁴ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 20 C.F.R. § 10.138(b)(1).

for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.⁶

Appellant's February 16, 1998 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a point of law. Additionally, he did not advance a point of law or a fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above noted requirements under section 10.138(b)(1). With respect to the third requirement, submitting relevant and pertinent evidence not previously considered, while appellant submitted additional medical evidence, this evidence was not relevant to the dispositive issue on reconsideration. Appellant's claim was denied because he failed to implicate or substantiate any compensable factors of employment.⁷ Inasmuch as the medical evidence submitted on reconsideration did not specifically address this issue, the Office properly concluded that the newly submitted evidence was immaterial, and thus, did not warrant reopening the claim for a merit review.⁸ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.138(b)(1). As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.138(b)(1), the Board finds that the Office did not abuse its discretion in denying appellant's February 16, 1998 request for reconsideration.

⁶ 20 C.F.R. § 10.138(b)(2).

⁷ In order to establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors; *see Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Gary M. Carlo*, 47 ECAB 299, 305 (1996).

⁸ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

The June 1, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member