U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAY F. WAINWRIGHT and U.S. POSTAL SERVICE,
POST OFFICE, Anchorage, AK

*Docket No. 98-1233; Submitted on the Record;*
*Issued May 23, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

In the present case, appellant filed a claim on January 20, 1994, alleging that she sustained an emotional condition causally related to her federal employment. By decision dated June 23, 1994, the Office denied the claim on the grounds that compensable factors of employment had not been substantiated. By decision dated November 13, 1995, an Office hearing representative affirmed the prior decision.

In a decision dated February 27, 1997, the Office determined that appellant's November 11, 1996 request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that the Office did not abuse its discretion in refusing to reopen the case for merit review.

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 her appeal on February 24, 1998, the only decision over which the Board has jurisdiction on this appeal is the February 27, 1997 decision denying her request for reconsideration.

[1] 20 C.F.R. § 501.3(d).

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 provide 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 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 did submit evidence that had not previously been considered by the Office. There is an affidavit from Ann Ghete dated November 4, 1996 and an affidavit dated November 11, 1996 from Aida Lau; appellant also submitted training records from 1988 to 1992. This evidence, however, does not provide new and relevant information with respect to appellant's claim. The record indicates that Ms. Ghete and Ms. Lau had previously submitted statements that were considered by the Office. For example, an October 30, 1991 statement from Ms. Ghete had discussed an October 26, 1991 incident between appellant and her supervisor, and the affidavit provides a similar description of the incident, without providing new and relevant information. The affidavit from Ms. Lau indicates that she did not witness the October 26, 1991 incident. With respect to the training records, although appellant states that they support that the employing establishment acted abusively, the records themselves do not provide any pertinent evidence regarding appellant's claim. Appellant also submitted an October 21, 1996 employing establishment protocol regarding threats and assaults, but there is no indication that the protocol was applicable during the alleged incidents or otherwise constitutes relevant evidence of a compensable work factor.

The remainder of the evidence is duplicative of evidence previously considered by the Office and is not sufficient to warrant reopening the claim.

Although appellant argues that the hearing representative erred in applying and interpreting the law, her request for reconsideration does not show such error. For example, she argued that the hearing representative implicitly required that a physical injury occur before the alleged confrontation with her supervisor could be compensable. Appellant concedes that the hearing representative did not explicitly make such a finding, and the Board cannot find that the decision of the hearing representative applied an improper legal standard. Her disagreement with the application of the law is not a sufficient basis to reopen the claim for merit review. Appellant's request for reconsideration does not show that the Office erroneously applied or interpreted a point of law, nor does it meet any of the requirements of section 10.138(b)(1). The Board therefore finds that the Office properly refused to reopen the claim for merit review in this case.

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

The decision of the Office of Workers' Compensation Programs dated February 27, 1997 is affirmed.

Dated, Washington, D.C.
May 23, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member