

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK ESCALANTE and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 99-353; Submitted on the Record;
Issued May 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on July 16, 1998.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant, a supervisor of customer services, filed a claim on February 2, 1995 alleging that he developed an emotional condition due to factors of his federal employment. The Office denied appellant's claim on April 25, 1995 finding that he failed to establish fact of injury. Appellant requested reconsideration on April 23, 1996 and submitted additional evidence. By decision dated June 19, 1996, the Office found that appellant had established a diagnosed condition and that he had substantiated factors of employment; however, the Office found that the medical evidence did not establish a causal relationship between appellant's diagnosed condition and his accepted employment factors. Appellant requested reconsideration on June 4, 1997. By decision dated July 18, 1997, the Office denied modification of its June 19, 1996 decision. Appellant requested reconsideration on June 22, 1998. By decision dated July 16, 1998, the Office found that the evidence was not sufficient to require review of the merits of appellant's claim.

Section 10.138(b)(1) 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.¹ Section 10.138(b)(2) provides that when an application for review of the merits of a

¹ 20 C.F.R. § 10.138(b)(1).

claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.²

In support of his June 22, 1998 request for reconsideration, appellant submitted a report dated May 27, 1998 from Dr. Heywood W. Zeidman, a Board-certified psychiatrist. In this report, he stated that he believed that stress from appellant's employment contributed to his psychiatric problems. The record contains reports from Dr. Zeidman dated June 23, 1994 and January 20, 1993 which were considered by the Office in reaching its decision on June 19, 1996. In the reports previously considered by the Office, he also indicated that employment stress contributed to appellant's emotional condition. As Dr. Zeidman's report is in essence repetitious of his previous reports it is not sufficient to require the Office to reopen appellant's claim for review of the merits. Furthermore, his May 27, 1998 report is not relevant to the issue for which the Office denied appellant's claim as he does not specifically note the accepted factors of employment and provide an opinion complete with medical reasoning as to why he believes that the accepted employment factors caused or contributed to appellant's diagnosed condition.

Appellant also submitted a report dated April 16, 1991 from Dr. James N. McClure, Jr., a Board-certified psychiatrist. He stated, "I feel that [appellant] is experiencing an episode of major depression which I think is probably endogenous and independent, but adding to his severe work stress. He certainly does have severe work stress, which on the face of it does not seem to be of his doing."

This report is not sufficient to require the Office to reopen appellant's claim for consideration of the merits as it does not add any relevant new evidence. Dr. McClure seems to state that appellant's work stress was increased by his depression rather than that appellant's depression is causally related to his work. As appellant has attributed his depression to factors of his federal employment, this report is not supportive of appellant's claim and is therefore not relevant new evidence which would require the Office to reopen appellant's claim for review of the merits.

² 20 C.F.R. § 10.138(b)(2).

The July 16, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 3, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member