

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL H. GREGG and U.S. POSTAL SERVICE,
POST OFFICE, Iowa City, IA

*Docket No. 00-2097; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

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

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

Appellant filed a claim on November 16, 1996 alleging that he sustained an emotional condition causally related to factors of his federal employment as a postmaster. By decision dated February 21, 1997, the Office denied the claim, finding that appellant had not established any compensable factors of employment. In decisions dated August 12, December 23, 1997 and March 3, 1998, the Office determined that appellant's requests for reconsideration were not sufficient to require reopening the claim for merit review.

On May 30, 1998 appellant filed an appeal with the Board. By order dated January 6, 2000, the Board remanded the case for reconstruction and proper assemblage of the case record. In a decision dated February 23, 2000, the Office determined that appellant had not submitted sufficient evidence to require reopening the claim for merit review.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ The initial appeal was filed on May 30, 1998; the only decisions over which the Board had jurisdiction were the August 12, December 23, 1997 and March 3, 1998 nonmerit Office decisions. Following the Board's order remanding the case for proper construction of the case record, the Office issued a nonmerit decision dated February 23, 2000 and appellant filed the current appeal on May 22, 2000. Therefore the only issue presented is whether the Office properly determined that the evidence submitted after the February 21, 1997 merit decision was insufficient to warrant reopening the case for merit review.

¹ See 20 C.F.R. § 501.3(d).

The Board has reviewed the record and finds that the Office properly refused to reopen the claim for merit review.

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 provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁴

In this case, appellant's allegations included that he was overworked, that the Office committed error or abuse in administrative matters, and that he was subject to harassment and retaliation. The Office denied the claim on the grounds that compensable work factors had not been substantiated. The Board finds that the evidence submitted after the February 21, 1997 merit decision, however, does not constitute new and relevant evidence.

Appellant submitted a report dated March 18, 1997 from Dr. Robert B. Wesner, a psychiatrist, but his report restates appellant's allegations without providing probative evidence with respect to compensability. The Board notes that, until a compensable work factor is substantiated, a medical issue is not presented.⁵ Appellant also submitted a January 10, 1998 statement from Kim McCarty, who stated that in 1993 she was the Superintendent of Postal Operations for Customer Service. She noted that a 1993 reorganization eliminated two mid-level managerial positions and "I would have to believe that approximately 90 to 100 work hours per week would be unrealistic for anyone to absorb." Appellant argues that this substantiates that two positions were eliminated and that he had to work long hours. With respect to the elimination of the managerial positions, this was accepted as factual by the Office, but was not considered a compensable work factor in the absence of error or abuse.⁶ With respect to overwork, the statement does not constitute new and probative evidence on the issue. Appellant had made general allegations of overwork due to staffing changes prior to the February 21, 1997 Office decision. The January 10, 1998 statement does not discuss specifically and in detail the nature and extent of any change in appellant's identified job duties or requirements, or otherwise

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. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ The Board has found that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

provide relevant evidence on the issue of overwork. To be of probative value, the evidence must document specific allegations of overwork.⁷

Appellant also submitted a memorandum dated January 24, 1995 from supervisor Steve Courtright, indicating that appellant would be excluded from the fiscal year 1994 merit pay program. The memorandum does not provide any evidence of error or abuse in the administrative decision. Appellant appears to argue that it is relevant in showing that he did not meet minimum requirements while working long hours, but the memorandum notes only some of the performance levels for the post office managed by appellant, without providing specific relevant evidence on the allegation of overwork by appellant.

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, nor did he submit new and relevant evidence with respect to compensable work factors. Accordingly, the Office properly refused to reopen the claim for merit review.

The decision of the Office of Workers' Compensation Programs dated February 23, 2000 hereby is affirmed.

Dated, Washington, DC
November 2, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁷ See, e.g., *Bonnie Goodman*, 50 ECAB ____ (Docket No. 97-353, issued November 13, 1998).