

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KERRY B. PROVANCE and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 99-1541; Submitted on the Record;
Issued November 14, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On January 8, 1996 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition in the performance of duty. By decision dated July 17, 1996, the Office denied appellant's claim. Appellant requested an oral hearing, which was held on June 24, 1997.

In a decision dated and finalized October 7, 1997, an Office hearing representative affirmed the Office's July 17, 1996 decision. He found that appellant had established one compensable factor of employment, his reaction to the timeframes required for the delivery of mail and the daily route maintenance required. However, the medical evidence did not establish that appellant sustained an emotional condition causally related to this factor. The Office hearing representative found that the other factors alleged by appellant were either not established as factual or were not compensable factors of employment.

By letter dated October 1, 1998, appellant requested reconsideration, submitted additional evidence and argued that the medical evidence of record established that he sustained an employment-related emotional condition. By decision dated November 17, 1998, the Office denied appellant's request for reconsideration.

The Board's jurisdiction to consider appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his appeal with the Board on January 22, 1999, the only decision before the Board is the Office's November 17, 1998 decision denying appellant's request for reconsideration. The

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

Board has no jurisdiction to consider the Office's October 7, 1997 or July 17, 1996 merit decisions, denying appellant's claim for compensation benefits.²

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.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In support of his request for reconsideration, appellant submitted several documents: a copy of a July 15, 1998 memorandum to employees from the employing establishment regarding its zero toleration policy for violence in the workplace, which mentions two altercations involving unnamed employees; a copy of a July 24, 1998 letter in which appellant asked the employing establishment to grant a reasonable accommodation hearing regarding his mental disability; a copy of a July 28, 1998 letter from appellant regarding the July 15, 1998 memorandum, in which appellant asked that two of his supervisors be removed if they were the individuals involved in the altercations and related to two of his previous allegations concerning these individuals; an August 19, 1998 letter from the employing establishment denying his request for a reasonable accommodation hearing; and a copy of a newspaper article concerning a private industry employee's claim for work-related depression.

This additional evidence does not constitute relevant and pertinent evidence not previously considered by the Office because it does not address the deficiencies in appellant's claim as explained in the October 7, 1997 decision of the Office hearing representative and the Office's July 17, 1996 decision. Appellant's claim was initially denied because he failed to establish certain of his allegations as factual, because other allegations concerned employment factors not deemed compensable and because the medical evidence did not establish that the one compensable factor was the cause of his claimed emotional condition.

The evidence submitted by appellant in his October 1, 1998 request for reconsideration does not address these issues. The newspaper article does not concern appellant's claim. The July 15, 1998 employing establishment memorandum is addressed to all employees and does not pertain to appellant's specific allegations in his claim. The letters regarding appellant's request for reasonable accommodation do not address appellant's allegations. The letter from appellant regarding the July 15, 1998 employing establishment memorandum mentions two of appellant's allegations previously considered by the Office, but provides no additional information or corroboration. Therefore, the evidence submitted by appellant in support of his request for reconsideration does not constitute relevant and pertinent evidence not previously considered by the Office.

² *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

As appellant failed to submit relevant and pertinent evidence not previously considered by the Office, did not advance a point of law or a fact not previously considered by the Office and did not show that the Office erroneously applied or interpreted a point of law, the Office did not abuse its discretion in denying his request for reconsideration.

The November 17, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 14, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member