

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY M. GOLDIN and DEPARTMENT OF THE NAVY,
CONSOLIDATED CIVIL PERSONNEL OFFICE, Bethesda, MD

*Docket No. 99-1764; Submitted on the Record;
Issued November 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

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.¹ As appellant filed an appeal with the Board on April 20, 1999, the only decision before the Board is the January 20, 1999 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Workers' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 20 C.F.R. § 10.606(b)(2)(i-iii).

section 10.606(b)(2).³ If reconsideration is granted, the case is reopened and the case is reviewed on the merits.⁴

On July 12, 1996 appellant filed an occupational claim, CA-2, alleging that she had an exacerbation of hypertension with possible transient ischemic attacks and cardiovascular accident resulting from harassment from her supervisors, Janet Fuller and Harriet Campbell. Appellant's instances of harassment included: being repeatedly denied a handicapped parking space after undergoing her first and second hip replacements; being assigned a temporary detail in support services in retaliation for her parking requests; being denied a leave request having her computer broken into and her password removed; being assigned a position she did not have skills to perform; and being yelled at or treated sarcastically and meanly by her supervisors one of whom threw two boxes at her in one. Appellant believed she was being harassed, in part, because of her age, disability and the fact that she filed an Equal Employment Opportunity (EEO) complaint. Appellant stopped working on May 1, 1996 and has not returned.

By decision dated October 3, 1996, the Office denied the claim, stating that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. By letter dated August 20, 1997, appellant requested reconsideration of the Office's decision and submitted additional evidence. By decision dated October 22, 1997, the Office denied appellant's request for modification.

By letter dated October 22, 1998, appellant requested reconsideration of the Office's decision and submitted two affidavits by her coworkers, Kiva Stewart and Linda Pennington dated October 20 and 22, 1998 respectively.

In her affidavit, Ms. Stewart stated that appellant and Ms. Campbell shared a cubicle that was across the walkway from where she sat in Code 51 and "[e]veryone in Code 51 heard Ms. Fuller fussing at [appellant] and Ms. Fuller raised her voice several times at different people including appellant." She stated that "quite a few times" Ms. Fuller and Ms. Campbell would tell appellant, who was the oldest person in Code 51, that she needed to retire. They said it like a joke and in a mean manner, and appellant would walk by as if she did not hear them but she heard every word. Ms. Stewart also stated that Ms. Fuller and Ms. Campbell would joke about appellant's handicap, saying such things as "If you're sick, stay home," or "Why didn't you stay home today?" directly to appellant and under their breath and everyone in Code 51 heard them.

Ms. Stewart stated that she believed Ms. Fuller and Ms. Campbell picked on appellant more than anyone else in Code 51 due to her age and handicap. She also stated that she heard appellant request a reserved parking space several times and Ms. Fuller did not grant her one. Ms. Stewart stated that the whole command was afraid of Ms. Fuller because she was in charge of many operations and intimidated the employees. She stated that she heard Ms. Fuller being nasty to appellant on the telephone, stating several times when appellant called in sick, "You better come in tomorrow" or "You better bring your doctor's slip."

³ 20 C.F.R. § 10.608(a).

⁴ *Id.*

Ms. Stewart stated that Ms. Fuller and Ms. Campbell were “very much hostile, rude, belligerent and accusatory” towards appellant. She also stated that Ms. Fuller and Ms. Campbell were mean to appellant after she went to the EEO and treated her “like dog crap” because she reported them. Ms. Stewart stated that she heard Ms. Campbell say “something ... to the effect” that she did not care about appellant’s handicap. Further, on May 1, 1996 when Ms. Fuller asked appellant about a particular assignment which appellant had not yet completed, she stated “What’s the matter? Are you sick? Do I need to call an ambulance? 911?” Subsequently, an ambulance was called and appellant was taken out on a stretcher.

In her affidavit, Ms. Pennington stated that appellant had to compete for parking spaces after her hip replacements and was not granted a handicapped parking space and that appellant was reclassified from the position of computer specialist to management analyst. She also stated that appellant told her that “sometime in February 1996” Ms. Fuller spent 15 minutes “screaming” at appellant and making degrading statements about her personal appearance and disability. Ms. Pennington stated that she observed appellant losing her strength and sinking into “deep despair” from the verbal and physical abuse she received from Ms. Fuller and Ms. Campbell.

These affidavits do not show that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. Further, the affidavits do not constitute relevant and pertinent new evidence not previously considered by the Office. The examples of harassment Ms. Stewart and Ms. Pennington cite, such as appellant’s being refused handicapped parking or having her job classification changed, were previously considered by the Office and found not to be within appellant’s regularly assigned duties within the meaning of the Act.⁵

Appellant has not established that the Office abused its discretion in its January 20, 1999 decision denying appellant’s request for a review on the merits because she has failed to show that the Office erroneously applied or interpreted a specific point of law, to advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

⁵ See *Beverly Diffin*, 48 ECAB 125, 128-29 (1996) (reactions to leave matters and lack of handicapped parking do not constitute employment factors because they are administrative matters not related to regular or specially assigned work duties).

The decision of the Office of Workers' Compensation Programs dated January 20, 1999 is hereby affirmed.

Dated, Washington, DC
November 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member