

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY L. GATLIN and U.S. POSTAL SERVICE,  
POST OFFICE, Coppel, TX

*Docket No. 00-2587; Submitted on the Record;  
Issued August 29, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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

On May 19, 1998 appellant, then a 42-year-old letter carrier, filed an emotional claim alleging that he sustained an "agitated depression" because his supervisor discriminated against him and created an "impossible work situation." Appellant underwent lower back surgery for disc herniation on March 25, 1997 and returned to light duty on April 14, 1997. Because of allegedly threatening remarks appellant made in a meeting, the employing establishment placed him on enforced leave effective June 1, 1998.

Appellant allegations included that a coworker tape recorded him at work which resulted in a fight and his being attacked by her, he was investigated for allegedly stalking that coworker, the postmaster, Dale Glover, and another supervisor harassed him by yelling at him, Mr. Glover and another supervisor initially denied him light-duty work when it was available, in one instance, Mr. Glover initially denied him leave, then granted it, and he was unfairly placed on enforced leave.

By decision dated October 8, 1998, the Office denied his claim, stating that the evidence of record failed to demonstrate that he sustained an injury in the performance of duty.

Appellant requested an oral hearing before an Office hearing representative which was held on May 24, 1999. At the hearing, appellant elaborated on the incidents he alleged happened including the tape recorder incident, the investigation of his stalking the coworker, his supervisors yelling at him, of being denied leave and light-duty work and being unfairly placed on enforced leave.

By decision dated July 9, 1999, the Office hearing representative affirmed the Office's October 8, 1998 decision.

In an undated letter received by the Office on January 6, 2000, appellant requested reconsideration of the Office's decision and submitted a medical report dated November 3, 1999 from his treating physician, Dr. William E. Coopwood, a Board-certified psychiatrist and neurologist. In his request, appellant stated that the Office hearing representative failed to acknowledge statements of events by eyewitnesses concerning the behavior of Postmaster Glover, and a handwritten note by Mr. Glover dated May 30, 1996 seeking to deny appellant compensation for a job-related injury. Appellant stated that the Office hearing representative erroneously found he was removed from his job because he was found to be a danger to others when in fact he was removed for misconduct which was overturned. Further, appellant stated that the Office hearing representative did not acknowledge Mr. Glover's part in the "malicious and illegal" action of removing him. Further, appellant contended that the Office hearing representative had a slanted view toward him as indicated in his statement that appellant was self-serving and unconvincing. Appellant also contended that the transcript did not have the Office hearing representative's view towards "physicists," although appellant likely meant physicians. Appellant concluded that the Office hearing representative accepted the employing establishment's position "carte blanche" and ignored evidence of Mr. Glover's view towards his lower back claim.

In his November 3, 1999 report, Dr. Coopwood considered that appellant had problems at work consisting of his being accused of committing fraud in his claim for disability, of making terroristic threats and of attempts being made to "catch" him by spying on him at his residence in order to prove that he was malingering. He diagnosed mood disorder, paranoid personality disorder and work-related lumbar disc rupture.

By decision dated February 14, 2000, the Office denied appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed the appeal with the Board on August 17, 2000, the only decision before the Board is the Office's February 14, 2000 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' 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.<sup>2</sup> A timely request for reconsideration may be granted if the Office determines that the employee has

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

<sup>2</sup> Section 10.606(b)(2)(i-iii).

presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup>

In this case, the arguments appellant raised in his request were either not new legal arguments or were not relevant to the issue being adjudicated. Dr. Coopwood's November 3, 1999 report does not establish that there were compensable factors of employment that caused appellant's emotional condition and does not address causation. His opinion is therefore not relevant.<sup>4</sup> Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office and did not present relevant and pertinent new evidence not previously considered by the Office, he did not establish that the case should be reopened for merit review. The Office therefore acted within its discretion in denying appellant's reconsideration request.

The decision of the Office of Workers' Compensation Programs dated February 14, 2000 is hereby affirmed.

Dated, Washington, DC  
August 29, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> Section 10.608(a).

<sup>4</sup> See *Bernard Snowden*, 49 ECAB 144, 147-48 (1997).