

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA S. GORDON and U.S. POSTAL SERVICE,
POST OFFICE, Merryfield, VA

*Docket No. 00-2749; Submitted on the Record;
Issued August 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

On November 11, 1998 appellant, then a 55-year-old mailhandler, filed an occupational disease claim alleging that she suffered from stress and nervous anxiety attacks brought on by verbal abuse from her supervisor. She was off work from October 30 to November 2, 1998.

Appellant alleged that she was instructed by her supervisor, Marty Brennan, to take a safety program on October 29, 1998. She stated that, during the program, Mr. Brennan repeatedly paged her and when she finally answered the telephone, he spoke in an "obnoxious" manner, demanding that she report back to the floor. Appellant related that when she got off work that day she was treated at the emergency room for shortness of breath due to a nervous anxiety attack.

In support of her claim, appellant submitted a statement from Frank H. Murphy, a chief shop steward, indicating that appellant was paged over the public address system by her supervisor five to six times on October 27, 1998.

In a March 15, 1999 letter, the Office advised appellant of the factual and medical evidence required to establish her claim.

In a decision dated May 24, 1999, the Office denied compensation on the grounds that appellant failed to allege a compensable factor of employment and therefore failed to establish that she sustained an emotional condition while in the performance of duty.¹

¹ The Office noted in an attached memorandum dated May 20, 1999 that appellant's allegations of verbal abuse by her supervisor were unsubstantiated. There were no witness statements provided to corroborate appellant's allegations of harassment.

On June 10, 1999 appellant requested reconsideration but submitted no additional evidence. On July 7, 1999 the Office denied appellant's request in a nonmerit decision.

Appellant filed a second reconsideration request on September 21, 1999 and submitted: (1) discharge instructions from the Civista Medical Center, including prescription information; (2) intermittent Medicare/insurance forms that included a diagnosis of anxiety; (3) a family medical leave form; (4) an August 10, 1999 report from Dr. Jyoti Behl, a psychiatrist, indicating that appellant was treated for anxiety and panic disorder; (5) a standard union grievance form signed by John C. Holmes, a union steward, outlining his intervention on October 29, 1998 between appellant and her supervisor; and (6) a settlement of an Equal Employment Opportunity (EEO) discrimination complaint.

In a November 22, 1999 decision, the Office denied reconsideration on the grounds that appellant's evidence was insufficient to warrant a merit review.

On April 24, 2000 appellant again requested reconsideration and submitted copies of the evidence previously submitted along with her September 21, 1999 reconsideration request. She also submitted a February 10, 2000 report from Dr. Behl.

In a June 9, 2000 decision, the Office again denied appellant's request for reconsideration on the merits.

The Board has jurisdiction to review only those final Office decisions issued within one year of the date of appellant's appeal.² Since appellant filed her appeal on August 29, 2000, the only decisions before the Board in this appeal are dated June 9, 2000 and November 22, 1999.

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration on the merits.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.³ The regulations provide 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 new evidence not previously considered by the Office.⁴ When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.

² 20 C.F.R. § 5013(d)(2) provides that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

³ 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ 20 C.F.R. § 10.606(b).

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁶ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁷

In support of her September 21, 1999 reconsideration request, appellant submitted new evidence consisting of copies of appellant's union grievance application and a grievance form signed by Mr. Holmes, which addresses the alleged October 29, 1998 work incident. Because Mr. Holmes' statement and the EEO documents are new and relevant evidence on the issue of whether appellant was harassed by her supervisor, the Office erred in its November 22, 1999 decision by not conducting a merit review.⁸ Accordingly, the case is remanded for the Office to perform a merit review on whether appellant established that she sustained an emotional condition while in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated June 9, 2000 and November 22, 1999 are hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
August 14, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

⁷ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁸ Because appellant was entitled to a merit review, the Office's subsequent decision dated June 9, 2000 is null and void.