

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GAIL LAIDONER-ROTHMAN (claiming as widow of DAVID ROTHMAN)  
and DEPARTMENT OF AGRICULTURE, PLANT INSPECTION STATION,  
Inglewood, CA

*Docket No. 00-2796; Submitted on the Record;  
Issued August 6, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

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

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion by denying appellant's request for reconsideration.

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.<sup>1</sup> As appellant filed her appeal with the Board on August 24, 2000, the only decision properly before the Board is the Office's June 9, 2000 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's August 24, 1998 decision denying appellant's claim.<sup>2</sup>

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 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> 20 C.F.R. § 10.608(b).

On May 22, 1998 appellant filed a claim for the depression and death of the employee, her husband, who died on April 22, 1998 due to a self-inflicted gunshot wound. The employee had worked as a canine officer.

By decision dated August 24, 1998, the Office denied appellant's claim on the grounds that the employee's suicide was not sustained in the performance of duty.

By letter dated August 23, 1999, appellant requested reconsideration and submitted additional evidence and argument.

By decision dated June 9, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence of record was not sufficient to warrant further merit review of the claim.

In a statement dated April 30, 1996, supervisor Clayton Iijima stated that the employee had complained of close monitoring of his work activities by Eileen Smith, the supervisor of the canine officers.

In a letter dated February 18, 1997 to the employee, Dave Thompson, a supervisor, denied the employee's request for a schedule change on the basis that his physician had provided insufficient medical explanation for the request.

In a letter dated February 22, 1997, the employee responded to Mr. Thompson's February 18, 1997 letter and alleged that he had been unfairly denied his request for a schedule change.

In a memorandum dated March 18, 1997, Frederic Chang, a coworker, noted that Ms. Smith had pressured the employee to write a training manual for canine officers and that the employee stated that he was not qualified to write the manual. He alleged that Ms. Smith threatened the employee with disciplinary action.

In a statement dated March 20, 1997, Michael Mataraazzo stated that the employee objected to being asked to write a training manual but that Ms. Smith insisted asking him to write the manual, which the employee considered harassment.

In a statement dated March 20, 1997, Diana Verity, a canine officer, stated that Ms. Smith threatened the employee with disciplinary action if he did not write the training manual.

In a statement dated June 21, 1999, Edward Annos, a coworker, stated his opinion that Ms. Smith harassed the employee, that the employee was unfairly denied a promotion, that his request for a schedule change was denied that he was harassed concerning his race.

The employment factors mentioned in these statements and letters, close monitoring, denial of a promotion, harassment, the training manual assignment, denial of a schedule change, and racial harassment, were previously raised by appellant and considered by the Office in its August 24, 1998 decision and found either to be noncompensable factors or allegations not

established as factual. Furthermore, the statements and letters submitted by appellant do not establish that any factors previously considered and rejected by the Office were factual and compensable factors of employment. Therefore, the statements and letters submitted with appellant's request for reconsideration do not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant submitted a note from the employee dated April 22, 1998. This evidence was previously considered by the Office and therefore does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted newspaper articles regarding the employee's suicide. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.<sup>5</sup> Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted medical evidence. However, unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.<sup>6</sup>

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 submit relevant and pertinent evidence not previously considered by the Office, the Office acted within its discretion in denying her request for reconsideration.

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<sup>5</sup> See *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>6</sup> See *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

The June 9, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 6, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member