

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH GILMORE and DEPARTMENT OF THE AIR FORCE,
BUCKLEY AIR NATIONAL GUARD BASE, CO

*Docket No. 01-100; Submitted on the Record;
Issued August 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record and finds that the Office's refusal to reopen appellant's case for further reconsideration of the merits of her claim constituted an abuse of discretion.

On April 8, 1999 appellant, then a 58-year-old industrial property administrator, filed a notice of occupational disease, claiming that her stress and related heart disease, migraines, high blood pressure and pneumonia were caused by the harassment of a fellow "problem employee" over the last three years.

By decision dated August 11, 1999, the Office accepted appellant's claim for "post-traumatic stress disorder."

By decision dated August 11, 1999, the Office denied appellant's claim for high blood pressure, headaches and pneumonia, since the record did not contain medical evidence establishing causal relationship between appellant's diagnosed conditions and the problem coworker.

By letter dated March 1, 2000, appellant requested reconsideration. In support of her request, appellant submitted a list of her medical history, medical notes and reports from Dr. Michael Sarche, a Board-certified internist, Dr. Jandell Allen-Davis, Dr. Elizabeth Steiner, Dr. Charlene Smith, and other miscellaneous medical notes. She also submitted prescription co-pay receipts, office visit co-pay receipts and the total number of sick hours used.

By decision dated March 13, 2000, the Office denied appellant's request for review finding that the evidence appellant submitted was repetitious in nature.

On August 8, 2000 appellant again requested reconsideration. By decision dated August 17, 2000, the Office denied her request for review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.¹

The Board finds that appellant submitted relevant new evidence not previously considered by the Office. In support of her March 1, 2000 request for reconsideration, appellant submitted a list of her medical history, a medical report from Dr. Sarche, as well as medical reports from Dr. Allen-Davis, Dr. Steiner, Dr. Smith, other miscellaneous medical notes, prescription co-pay receipts, office visit co-pay receipts and the total number of sick hours used. The only evidence of a repetitious nature were the medical notes dated March 23 and May 4, 1999 from Dr. Smith. All other evidence submitted by appellant is new evidence previously not considered by the Office.

The Board finds that the September 3, 1999 report from Dr. Sarche constitutes new and relevant evidence related to the issue of whether appellant's diagnosed medical conditions were sustained in the performance of duty. It is well established that the requirement for reopening a claim for merit review does not require a claimant to submit all evidence which may be necessary to establish his or her burden of proof.²

¹ 20 C.F.R. § 10.606(b)(2).

² See *Joseph L. Cabral*, 44 ECAB 152 (1992).

Accordingly, the August 17 and March 13, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded to the Office for a merit review to be followed by a *de novo* decision.³

Dated, Washington, DC
August 24, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ The issue of the Office's August 17, 2000 nonmerit decision is hereby moot since the March 13, 2000 decision is remanded.