

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET E. LYNCH and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 01-149; Submitted on the Record;
Issued August 16, 2001*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs, by its September 25, 2000 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

On June 28, 2000 appellant, then a 53-year-old clerk, filed a claim for post-traumatic stress disorder, colon eruption, chemical imbalance, anxiety disorder, sleep disorder, eating disorder, back pain, tremors, stomach pain, inability to concentrate, depression and dizziness. Appellant attributed these conditions to the denial of her application for disability retirement on February 16, 2000 and to letters of harassment and threat from the employing establishment. The employing establishment stated that appellant last worked there on March 28, 1999.

Appellant submitted letters addressed to her from the employing establishment: an April 22, 2000 letter denying her request under the Family and Medical Leave Act; an April 22, 2000 letter noting that her application for disability retirement was disapproved by the Office of Personnel Management and that her absence since March 28, 1999 had been charged to absence without leave; a May 2, 2000 letter instructing her to report for duty on May 16, 2000 and informing her that failure to report would result in initiation of removal action; and a June 19, 2000 letter noting that she was being considered for separation on account of disability and that she had the options of requesting reassignment or voluntarily resigning. Appellant also submitted medical reports addressing her condition and her ability to work.

By decision dated August 24, 2000, the Office found that the evidence failed to establish that appellant sustained an injury in the performance of duty. The Office found that the denial of appellant's disability retirement was not a factor of employment and that she had not shown error or abuse in the employing establishment's administrative actions.

By letter received by the Office on September 20, 2000, appellant requested reconsideration, stating that her disability resulted from harassment by management because

threats of separation were not normal when a disability retirement or workers' compensation claim was in reconsideration. She submitted reports from her hospitalization on March 18, 2000.

By decision dated September 25, 2000, the Office found that appellant did not submit any new relevant evidence and did not offer any pertinent legal contentions or arguments of facts, and that her request for reconsideration was insufficient to warrant a merit review of its prior decision.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹

Appellant attributed her emotional condition to two factors: denial of her application for disability retirement and the resulting letters by the employing establishment to have her return to work or separate her. The denial of disability retirement, which is an action by the Office of Personnel Management, is not a factor of employment giving rise to coverage under the Act.² The letters from the employing establishment constitute administration of personnel matters, which are unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act unless error or abuse by the employing establishment is shown.³ Appellant has not shown that the employing establishment acted unreasonably in issuing these letters⁴ and a claim for harassment cannot be sustained with regard to such administrative or personnel matters in the absence of a showing of error or abuse.⁵ She has not cited and substantiated any compensable factors of employment as the alleged cause of her emotional condition.

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991).

³ *Gracie A. Richardson*, 42 ECAB 850 (1991).

⁴ *See Richard J. Dube*, 42 ECAB 916 (1991).

⁵ *See O. Paul Gregg*, 46 ECAB 624 (1995).

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that 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. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

Appellant’s request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. As the Office denied appellant’s claim on the basis that she had not cited any compensable factors of employment, the new medical reports appellant submitted on reconsideration do not constitute relevant and pertinent new evidence not previously considered by the Office. The Office properly denied appellant’s request for reconsideration without reviewing the merits of her claim.

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

The decisions of the Office of Workers' Compensation Programs dated September 25 and August 24, 2000 are affirmed.

Dated, Washington, DC
August 16, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member