

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA CALLOWAY and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 01-182; Submitted on the Record;
Issued August 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's February 21, 2000 request for reconsideration.

In a decision dated June 22, 1999, the Office denied modification of its earlier decision rejecting appellant's claim for depression. The Office found that appellant had presented no evidence to document factually her perception of abuse, discrimination or harassment by the employing establishment.

On February 21, 2000 appellant requested reconsideration. In support thereof, she discussed the general nature of discrimination and harassment and stated that her supervisor's inappropriate behavior continued to cause her mental anguish. Appellant submitted a statement from her ex-husband, who witnessed her anguish. Appellant submitted a statement from her mother, who also witnessed her anguish.

In a decision dated March 13, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was irrelevant and therefore insufficient to warrant a merit review of the prior decision.

The Board finds that the Office acted within its discretion in denying appellant's February 21, 2000 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations¹ provides that an application for reconsideration, including all supporting documents, must be submitted in writing and 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. The request may be granted if the Office determines that the employee

¹ 20 C.F.R. § 10.606(b).

has presented evidence or argument that meets at least one of these standards. If the Office grants reconsideration, the case is reopened and reviewed on its merits. Where the request fails to meet at least one of the standards described, the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

Appellant's February 21, 2000 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her claim. Appellant made no attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did she advance a relevant and pertinent legal argument not previously considered by the Office. She offered as an argument a general discussion of the nature of discrimination and harassment, but this is not relevant to the grounds upon which the Office denied her claim. The Office found that appellant had submitted no evidence to document factually her perception of abuse, discrimination or harassment. In the absence of persuasive evidence substantiating that abuse, discrimination or harassment did in fact occur, appellant's mere perception of abuse, discrimination or harassment were insufficient to discharge her burden of proof. Appellant did submit two statements from people who attested to her mental anguish, but this evidence is again irrelevant. At best this evidence goes to the genuineness of appellant's perception, which is not at issue. At issue is whether probative factual evidence in the record establishes that abuse, discrimination or harassment did in fact occur. Appellant's February 21, 2000 request for reconsideration offered nothing new and relevant to advance her claim in this respect.

Because appellant's February 21, 2000 request for reconsideration failed to meet at least one of the standards for obtaining a merit review of her claim, the Office acted properly within its discretion in denying that request.

The March 13, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

² *Id.* at § 10.608.