

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRITTON C. HAMPTON and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 01-391; Submitted on the Record;
Issued August 27, 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 abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

This is the second time this case has been before the Board. To briefly summarize the facts, appellant filed a claim for benefits based on an alleged emotional condition on January 9, 1995. By decision dated October 20, 1995, the Office found that appellant failed to establish that she sustained an emotional condition in the performance of duty. By letter dated October 31, 1995, appellant requested a written review of the record by an Office hearing representative.

By decision dated May 8, 1996, the Office hearing representative denied appellant's claim, finding that the one implicated factor of employment was not established to have contributed to her alleged emotional condition. She therefore failed to establish that she sustained an emotional condition in the performance of duty. By letter dated May 3, 1997 and received by the Office on May 13, 1997, appellant requested reconsideration and submitted additional medical and factual information to support her claim. By decision dated May 22, 1997, the Office denied appellant's May 3, 1997 request for reconsideration, received on May 13, 1997, of its May 8, 1996 decision. The Office found that appellant filed her request for reconsideration after the one-year time limit for filing, set forth in 20 C.F.R. § 10.138(b)(2), expired.

In a decision issued May 20, 1999,¹ the Board found that the Office, in its May 22, 1997 decision, abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a) on the basis that her application for review was not timely filed. The Board therefore set aside the Office's May 22, 1997 decision and remanded the case to the Office to

¹ Docket No. 97-2446 (issued May 20, 1999).

consider appellant's May 3, 1997 request for reconsideration and determine whether she could obtain review of the merits of her claim.

By decision dated December 18, 1998, the Office denied appellant's claim, finding that she did not submit evidence to warrant modification of the May 8, 1996 merit decision.

By letter dated July 19, 2000, appellant requested reconsideration. In support of her request, appellant submitted a July 14, 2000 statement from her union representative, who indicated that she witnessed an altercation between appellant and her supervisor on October 2, 1994 in which appellant was verbally harassed and abused. Appellant also submitted a Form CA-20 dated May 8, 1997 from Dr. Robert S. Freeman, a Board-certified psychiatrist, which indicated appellant experienced depression resulting from a period of stressors at the workplace; Dr. Freeman checked a box indicating the condition was caused or aggravated by an employment activity.

By decision dated August 9, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, 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 evidence not previously considered by the Office.² 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.³

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and her request did not contain any new and relevant medical evidence for the Office to review. Although appellant submitted the form report from Dr. Freeman, this document was cumulative and repetitive of previous reports he submitted, and which were considered by the Office.⁴ Thus, his request did not contain any new and relevant medical evidence for the Office to review. This is important because although appellant submitted a statement from a witness who asserted she was verbally harassed by her supervisor, she has failed to submit medical evidence indicating that, due to this alleged, specific incident, she sustained an emotional condition resulting in a period of disability. Additionally, appellant's July 19, 2000 letter failed to show that the Office erroneously applied or interpreted a point of

² 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ Form reports that support causal relationship with a check mark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she sustained an emotional condition caused by factors of her federal employment, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated August 9, 2000 is hereby affirmed.

Dated, Washington, DC
August 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member