

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE EDWARDS and DEPARTMENT OF THE ARMY,
DUGWAY PROVING GROUND, WEST DESERT TEST CENTER, UT

*Docket No. 01-406; Submitted on the Record;
Issued August 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion by refusing to reopen appellant's case for review of the merits pursuant to 5 U.S.C. § 8128.

On December 4, 1998 appellant, then a 40-year-old secretary, filed a claim for an occupational disease alleging that she sustained an emotional condition while in the performance of duty.

By decision dated September 7, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. In a December 20, 1999 letter, appellant requested an oral hearing before an Office representative. Subsequently, appellant, through her counsel, requested reconsideration of the Office's decision.¹

By decision dated October 4, 2000, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was irrelevant, immaterial and of a repetitious nature, and thus, insufficient to warrant a review of the prior decision.

¹ By decision dated September 15, 2000, the Office denied appellant's request for reconsideration as untimely and that it failed to establish clear evidence of error. In a letter received by the Office on September 21, 2000, appellant, through her counsel, submitted a mail receipt indicating that her request for reconsideration was postmarked September 6, 2000 and it was received by the Office on September 8, 2000.

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.² As appellant filed her request for appeal on November 13, 2000, the only decision before the Board is the October 4, 2000 decision denying appellant's request for reconsideration on the merits.³

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ 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.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁷

In her request for reconsideration, appellant, through her counsel, argued that her emotional condition was caused by the following employment incidents: (1) sexual harassment from her employing establishment supervisor; (2) the employing establishment's failure to properly handle her allegation that her child was abused at the employing establishment's daycare center; (3) the withholding of her performance award check by her supervisor; (4) being ordered to remove her youngest child from the daycare center because of her child abuse allegation; (5) being blamed for the placement of the employing establishment on the "BRAC" list due to her child abuse allegation; (6) supporting the new Baptist minister at the employing establishment; (7) being subjected to racial slurs from supervisors and coworkers; (8) people listening in on her telephone calls at work; (9) not being allowed to leave work to vote like other employees; (10) her supervisor lying about her late arrival at work; (11) the delay of her performance appraisal by her supervisor; (12) being lied to by her supervisor regarding the existence of a leave donation program; (13) being overworked; (14) being tested by a coworker as to whether she was on Prozac based on the rumor the coworker heard; (15) having a program improperly downloaded from her computer by a coworker; (16) being physically assaulted by her coworkers; (17) having her email read by her supervisor; (18) being given a mediocre performance appraisal; (19) being verbally abused by her supervisor; (20) being required to give a coworker credit for taking a trip that she did not take; (21) receiving a letter of reprimand in front of her coworkers; and (22) having her security clearance revoked.

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ Because more than one year has elapsed between the issuance of the Office's September 7, 1999 merit decision and November 13, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the September 7, 1999 decision. *See* 20 C.F.R. § 501.3(d)(2).

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

Appellant's arguments are the same arguments that have already been considered by the Office. As appellant provided no new evidence, and the evidence she submitted with her request for reconsideration is repetitive and cumulative, it fails to meet the criteria specified in section 10.606(b)(1) and (2) requiring the Office to conduct a merit review.

Because appellant has failed to submit any new relevant and pertinent evidence not previously reviewed by the Office and further failed to raise any substantive legal questions, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The October 4, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member