

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE W. HAN and U.S. POSTAL SERVICE, PROCESSING
& DISTRIBUTION CENTER, San Francisco, CA

*Docket No. 00-1156; Submitted on the Record;
Issued December 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's claim for further review under 5 U.S.C. § 8128(a).

On November 29, 1992 appellant, then a 41-year-old clerk, filed an occupational disease claim alleging that she had been subjected to unwarranted harassment and stress from her coworkers and supervisors at work. By letter dated January 26, 1994, the Office accepted appellant's claim for a single episode of major depression that resolved by October 12, 1992.

On September 16, 1994 appellant filed a claim alleging that she sustained a recurrence of disability on January 31, 1994.

In a September 24, 1994 letter, the Office advised appellant that her recurrence claim would be converted to a new occupational disease claim because she had clearly identified new intervening work factors that were responsible for her emotional condition on January 31, 1994.

In an August 29, 1995 letter, the Office accepted appellant's claim for major depression.¹

¹ In a statement of accepted facts dated June 21, 1995, the Office found that the following incidents constituted compensable employment factors under the Federal Employees' Compensation Act: (1) comments made by appellant's coworker, Ray Pajarillo, in January 1994 that were of a sexual nature; (2) appellant's coworker, Rick Angel, told her that derogatory comments about her were written on the men's bathroom wall; (3) Mr. Pajarillo began staring and swearing at appellant and engaged another coworker, Conrad Depadua, to stare and laugh at appellant soon after management gave everyone a talk regarding sexual harassment; (4) Mr. Pajarillo swore at appellant on a daily basis during July 12 to 16, 1994; (5) Mr. Pajarillo took appellant's cart set-up and pushed it away on July 21, 1994; (6) Mr. Pajarillo called appellant names after she picked up cardboard trays placed on the floor by him on July 27, 1994; and (7) appellant was almost struck by a cart that Mr. Pajarillo placed near her cart set-up on July 28, 1994.

On September 23, 1995 appellant filed a claim for compensation for the March 5 to June 11, August 16 to October 22, November 15 to 19, 1994 and January 4 to April 1, 1995. Appellant received compensation for March 5 to June 11 and August 16 to October 21, 1994.

By decision dated March 18, 1998, the Office denied appellant's claim for compensation for October 22, November 15 to 19, 1994 and January 4 to April 1, 1995. In an April 11, 1998 letter, appellant requested an oral hearing, which was held on September 15, 1998.

In a November 12, 1998 decision, the hearing representative affirmed the Office's decision. By letter dated November 9, 1999, appellant requested reconsideration of the Office's decision. By decision dated November 29, 1999, the Office denied appellant's request for a merit review of her claim.

The only decision before the Board on this appeal is the Office's November 29, 1999 decision denying appellant's request for a review on the merits of its November 12, 1998 decision. Because more than one year has elapsed between the issuance of the Office's November 12, 1998 decision and January 27, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 12, 1998 Office decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ 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.⁶

In support of her request for reconsideration, appellant submitted a January 20, 1999 letter from Richard Bloom, a clinical psychologist and her treating physician, who indicated that during November 15-19, 1994 and January 4-April 1, 1995, he saw appellant for psychotherapy once or twice a month. He stated that, based on his records, appellant's psychiatric disability, mainly depression, was caused by stress on the job. Dr. Bloom added that there were instances of harassment and lack of accommodation on the part of appellant's supervisors. He noted that appellant sought medical treatment to help her return to work as soon as possible and learn more effective ways to deal with work stress.

This letter is insufficient to reopen appellant's claim because it does not relate to the main issue in this present case, whether appellant submitted medical evidence showing that she

² See 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

⁵ *Id.* at. § 10.607(a).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

sustained an emotional condition during October 22, November 15 to 19, 1994 and January 4 to April 1, 1995 due to the employment factors accepted by the Office. Dr. Bloom failed to identify specific compensable factors of employment and to address whether they caused appellant's emotional condition. Rather, he merely made a general statement that appellant's emotional condition was caused by job stress and harassment during the alleged periods of disability.

The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁷ Moreover, Dr. Bloom's assessment of appellant's medical condition is similar to that contained in prior reports. The Board has held that the submission of evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸

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 properly refused to reopen her claim for review of the merits.

The November 29, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 11, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁷ See *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).