U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEWEY I. COFFMAN and DEPARTMENT OF AGRICULTURE, FEDERAL CROP INSURANCE CORPORATION, Oklahoma City, OK

Docket No. 01-221; Submitted on the Record;
Issued December 12, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for reconsideration constituted an abuse of discretion.

On May 6, 1997 appellant, then a 62-year-old insurance management specialist, filed an emotional claim for stress resulting from harassment at work. Appellant stated that he had delusional disorder, persecutory type and position stress.

By decision dated April 28, 1998, the Office denied appellant's claim, stating that the evidence failed to establish that appellant sustained an injury while in the performance of duty.

By letter dated May 24, 1998, appellant requested an oral hearing, which was held on December 17, 1998.

By decision dated March 23, 1999, the Office hearing representative affirmed the Office's April 28, 1998 decision.

By letter dated March 18, 2000, appellant requested reconsideration of the Office's decision and submitted additional evidence.

By decision dated July 23, 2000, the Office denied appellant's request for reconsideration.

The only decision before the Board on this appeal is the Office's July 23, 2000 decision denying appellant's request for reconsideration. Because more than one year has elapsed between the issuance of the Office's March 23, 1999 decision and October 24, 2000, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the March 23, 1999 decision.[1]

[1] *See* 20 C.F.R. § 501.3(d)(2).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must 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.[2] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meet at least one of the standards described in section 10.606(b)(2).[3]

Much of the evidence appellant submitted in support of his reconsideration request was already a part of the record. Appellant submitted a certificate of a meritorious service medal he received in the Army on June 8, 1984, a 1982 certificate of participation in the Army Reserves and certificates for attending seminars at the National Defense University and the Air War College in 1981 and 1982. All these certificates were in the record. The witness statement appellant submitted from Thomas W. Lodgson, a coworker, the May 11, 1992 settlement agreement between appellant and the employing establishment for administrative grievances and an unsigned copy of a settlement agreement for appellant's complaint of discrimination based on age were in the record.

The February 1, 1993 letter from the employing establishment regarding appellant's complaint about being denied computer training by his former first-line supervisor, John Blankenship, was in the record. The December 5, 1991 letter from Mr. Blankenship responding to appellant's informal grievance and the December 12, 1992 letter from Mr. Blankenship explaining any misunderstanding regarding his denial of annual leave for appellant to attend his training class were in the record.

Several 1995 reports on appellant's work performance, signed by appellant's supervisor, Sam Cameron, accompanied by appellant's statements, were in the record. Appellant's Form SF-171 dated February 8, 1977 was in the record. The December 4, 1992 memorandum from Ronald L. Berryhill who stated that appellant believed there was a conspiracy of people "out to get him" and recommended that appellant be evaluated to determine if he needed professional help was in the record. Correspondence to Mr. Blankenship from appellant, alerting him to problems with the peanut data in 1991 and to the deputy manager, informing him that appellant was submitting a formal grievance "in hopes of improving" the system, were in the record. Memoranda in 1994 and 1995 from an auditor, James A. Kunze, and the inspector general requesting further information from appellant regarding peanut production problems in his office, were in the record. It is well established that evidence that repeats or duplicates evidence already contained in the record does not constitute a basis for reopening a claim for reconsideration of the merits.[4]

[2] 20 C.F.R. § 10.606(b)(2)(i-iii).

[3] 20 C.F.R. § 10.608(a).

[4] *See Richard L. Ballard*, 44 ECAB 146 (1992).

Other evidence appellant submitted was not in the record but was also not relevant to establishing that he sustained an emotional condition due to harassment on the job. Appellant submitted a performance improvement plan dated February 13, 1992 from management describing how he could improve his work performance. In a statement dated November 23, 1992, appellant explained in response to his supervisor's criticisms that he never printed any peanut "APH" forms and that he checked 10 yield histories, 3 of which contained errors, which he discovered when he worked late on November 16, 1992.

Appellant submitted an amended complaint dated May 31, 1994, to a case he brought in the district court of Oklahoma addressing management's age discrimination toward him. Appellant's original complaint addressing the same issues filed before the Oklahoma district court on May 9, 1994 was in the record. Appellant submitted a 1995 letter from the inspector general who found no major problems based on its limited reviews. Appellant submitted a statement that he was accused of changing the peanut data which he tried to report as wrong.

Appellant submitted correspondence from the personnel officer, Donald Grace, dated November 12, 1991 addressing his formal complaint, a memorandum dated December 7, 1992 rejecting his suggestion for improving the system and a notice dated April 21, 1997 that he could seek corrective action from the Merit Systems Protection Board. Appellant submitted correspondence related to his Equal Employment Opportunity Commission (EEOC) complaint a copy of his EEOC complaint dated August 4, 1997 and a letter dated April 2, 1993 dismissing appellant's complaint. Appellant submitted other correspondence from Mr. Blankenship responding to his November 1991 grievance, a 1994 memorandum from appellant, inquiring why his name was not on the office authority roster and memoranda informing the division that Mr. Blankenship would be acting Director in his absence in January, April and June 1994.

Appellant submitted 1991 correspondence to Senator Don Nickles addressing problems with a proposed reorganization of the office and a 1991 memorandum stating that reorganization had been approved. Appellant submitted an annual summary performance for 1991 from the Director and an undated letter to Marvin Hellman stating that he was receiving an award for superior performance. Further, appellant submitted a statement dated June 21, 1994 about his being behind at work. Additionally, appellant submitted a job description of the position of insurance management specialist and pictures and a certificate of appreciation for Lisa Volz.

Appellant raised numerous arguments in his request for reconsideration many of which had been previously addressed by the Office in the March 29, 1999 and April 28, 1998 decisions, the statement of accepted facts and in the documents of record. Appellant contended that his supervisor, Mr. Cameron, lied under oath at the hearing but did not provide evidence to support that claim. He reiterated that management harassed him.

Appellant stated that Mr. Blankenship would not allow him to take annual leave to travel with his wife to the hospital when his grandchildren were born. In one instance, Mr. Blankenship denied him annual leave even though he had six weeks' leave accumulated. He felt Mr. Blankenship allowed younger employees greater flexibility taking leave.

Appellant stated that Mr. Blankenship gave him a hard time at work particularly when Mr. Blankenship lost at the horse races and appellant felt that he was singled out among the

underwriters to look up loss data. He noted that he won his EEOC complaint and was given full relief but the employing establishing did not comply with that ruling. Appellant contended that he continued to be denied training and finally was sent to an African Male Managers Leadership school for one week where he was the only non-African in attendance.

In this case, some of the evidence appellant submitted to support his request for reconsideration was in the record and, therefore, was repetitive. The other evidence was either duplicative of previously submitted evidence or was not relevant to establishing that he sustained an emotional condition due to harassment at work.[5] For instance, appellant's amended complaint to his original complaint filed in the Oklahoma district court on May 9, 1994, documents related to his EEOC complaint and management's denial of his requests for training were duplicative of previously submitted evidence. The memoranda stating that Mr. Blankenship would be acting director for a period of time, the job description of appellant's position and the picture of and certificate of appreciation for Ms. Volz were not relevant to establishing his emotional claim. Similarly, the 1991 fiscal year summary performance, the letter stating that Mr. Hellman was receiving an award for superior performance, the letters to the Senator addressing the proposed reorganization were not relevant. The September 7, 1995 statement from the inspector general stating there were no major problems based on their limited reviews was also not relevant to appellant's claim.

Moreover, appellant did not raise any new, relevant arguments in his request for reconsideration. Although he contended in his request that Mr. Cameron lied at the hearing, he did not have corroborating evidence for that contention and, at the hearing, he testified that Mr. Cameron was not one of the supervisors who harassed him. Appellant had previously raised his contentions that Mr. Blankenship and management harassed him in general or unfairly denied him leave that he requested. The resolution of appellant's EEOC complaint as stated by management to the effect appellant would be reimbursed for his training expenses was in the record prior to his reconsideration request.

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, he has failed to support his request for reconsideration. The Office acted within its discretion in denying his request.

[5] *See Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

The July 23, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 12, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member