

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN A. ROHM and DEPARTMENT OF THE AIR FORCE,
MAC DILL AIR FORCE BASE, FINANCE DEPARTMENT, FL

*Docket No. 01-790; Submitted on the Record;
Issued December 28, 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 under section 8128(a) of the Federal Employees' Compensation Act by denying appellant's request for a review of her case on the merits.

On June 1, 1997 appellant, then a 49-year-old accounting technician, filed a notice alleging that she had sustained stress and depression, leading to "pernicious anemia and anxiety disorder," in the performance of duty.¹ Appellant alleged a general pattern of harassment and discrimination by her supervisors beginning in June 1987. She stopped work on June 13, 1997 and did not return. In associated statements, appellant asserted that she was downgraded on her performance appraisals due to complaining about various supervisors, that after a discrimination complaint was filed against her, a supervisor tried to replace her with his girlfriend, that from August 1992 to March 1993, in the aftermath of hurricane Andrew, she was overworked, putting in 14-hour days, 6 days per week.

Appellant submitted copies of position descriptions, performance appraisals, pay slips and time records showing overtime work, letters from coworkers asserting that appellant was hard working and highly skilled, documents relating to appellant's performance appraisal of Debra Mitchell, who was terminated in July 1992 and reinstated about a week later, resulting in an August 1992 equal employment opportunity (EEO) finding against appellant.²

¹ In a September 22, 1997 letter, appellant was advised of the type of additional medical and factual evidence needed to support her claim.

² Appellant also submitted medical reports from 1987 to 1997 describing treatment for a variety of conditions, including pernicious anemia, neck and back injuries from a nonoccupational car accident, anorexia, paresthesias, anxiety disorder and panic disorder, mammary cysts, cervical inflammation with mild dysplasia, hormonal imbalances and vertigo. Appellant attributed the majority of these conditions to work-related stress.

In an October 1, 1992 statement, Sylvia Miller, a former supervisor in appellant's division, recalled that during the TDY to the employing establishment in early 1990, errors were found dating back to 1987. Appellant was left to finish updating the erroneous records as she was the "only qualified employee there at the time. Ms. Miller noted that clerks were improperly trained, committed serious errors, and that "no one was auditing any of the clerk's computations or changes." Ms. Miller opined that all of the "clerks were working beyond their endurance and were 'putting out fires' rather than making any progress in their work."

In a June 11, 1997 statement, Twyla Faye Brewer, a former coworker of appellant's, alleged that appellant was given undesirable job assignments as she "challenged her job appraisal from supervisor Glenda Hunter." Ms. Brewer also asserted that appellant was blamed for coworkers' mistakes and not given credit for doing difficult work. Ms. Brewer noted that appellant was assigned to correct the most difficult reports with the highest number of errors, which created a stressful environment for appellant.

In a September 2, 1997 letter, Sheri R. Brown, an employing establishment branch chief, noted that appellant was involved in "consolidation operations" beginning in 1996, which was a new experience for everyone in appellant's squadron. Ms. Brown noted that appellant was very hard working, but tended to spend too much time on certain tasks, which left her behind on other work. Ms. Brown noted that appellant was absent in March 1997 for over three weeks related to neck surgery, but did not report any undue stress in adjusting to her return to work. Ms. Brown noted giving appellant a "superior" performance rating. She noted that appellant often worked through her lunch hour and stayed after her tour was over, but that appellant was not asked to do this. Ms. Brown noted granting appellant compensatory time to catch up on her filing, to enable appellant to earn leave hours for her neck surgery.

The employing establishment submitted October 1997 statements from appellant's former supervisors Glenda Hunter, William Diaz and Francis Main, which generally disputed appellant's allegations of harassment, discrimination and overwork.

In an October 13, 1997 statement, Ms. Hunter noted that appellant was a competent dedicated worker, that she was not treated unfairly or given undesirable assignments and that all tasks were rotated between the clerks every six months to allow for comprehensive training throughout the office. Ms. Hunter also recalled that appellant volunteered for overtime work.

In an October 16, 1997 statement, Mr. Main admitted that in August 1992, following Hurricane Andrew, many employees at the employing establishment put in overtime processing the payroll records from Homestead Air Force Base, which suffered severe damage. Mr. Main recalled that on one occasion in October 1992, all the payroll checks were sent to the wrong banks as appellant failed to enter the correct codes. Yet, appellant blamed other workers and refused to take responsibility for her errors.

In an October 17, 1997 letter, Mr. Diaz noted that although appellant was skilled and competent, there were many complaints against her. Appellant often complained to his superiors about what she perceived to be problems in the office, that appellant contributed to low morale by not being a team player, and that her allegations of harassment and discrimination were "totally false."

Appellant submitted a December 15, 1998 letter alleging that Ms. Hunter, Mr. Diaz and Mr. Frances did not provide a truthful account of workplace events. To remedy what appellant described as false statements against her, she requested that the Office subpoena the three supervisors, four other employees, various timekeeping documents which she alleged would demonstrate forced overtime and accounting records which she asserted would substantiate that she was not to blame for various financial errors.

By decision dated May 20, 1998, the Office denied appellant's claim on the grounds that she had not established that the claimed emotional condition occurred in the performance of duty, as she did not substantiate any compensable factor of employment. The Office found that appellant had established the following noncompensable factors as factual: receiving a "fully successful" rather than a "superior" performance rating for the period May 1, 1993 to April 30, 1994; receiving an "excellent" rather than a "superior" performance rating for 1988 to 1989 and 1989 to 1990; an August 25, 1992 EEO finding that appellant had discriminated against one of her subordinates. The Office found that appellant had failed to substantiate her claims of harassment by supervisors, that perceived shortcomings of her co-workers were true or that they caused her additional stress, or that a coworker caused her stress by playing computer games. Regarding appellant's allegations of overwork due to the need to fix various errors, the Office found that the employing establishment substantiated that the errors in question originated in appellant's office, but that she attempted to place the blame on her coworkers for those mistakes. The Office therefore concluded that the cause for the overtime work was in dispute.

Appellant disagreed with this decision, and in a June 13, 1998 letter requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held November 17, 1998. The record demonstrates that the hearing transcript was lost. Therefore, a second hearing was scheduled for July 1999. In a May 17, 1999 letter, appellant requested a review of the written record in lieu of an oral hearing.

By decision dated October 6, 1999 and finalized October 7, 1999, an Office hearing representative affirmed the Office's May 20, 1998 decision. The hearing representative reviewed the entire case record, and found that appellant "provided absolutely no documentary evidence of *any* kind to support her allegations against the [employing establishment," including harassment or discrimination. (Emphasis in the original.) The hearing representative concluded that appellant failed to implicate any compensable factor of employment and that therefore the claimed emotional condition could not have arisen in the performance of duty.

Appellant disagreed with this decision and in a September 14, 2000 letter requested reconsideration. In her letter, appellant repeated her request for the Office to issue subpoenas for time and attendance records, personnel records involving appointing employees to supervisory positions and six "witnesses." She reiterated that these documents and witnesses would prove that she was harassed, discriminated against, deprived of promotional opportunities and made to work excessive overtime. Accompanying her request, appellant submitted copies of the May 20, 1998 and October 7, 1999 decisions, a copy of her November 10, 1998 request to issue subpoenas, a copy of her performance ratings for the periods July 1, 1989 to June 30, 1990, July 1, 1992 to April 30, 1993, and May 1, 1993 to April 30, 1994, a copy of the October 1, 1992

letter to appellant from Sylvia Miller, a copy of an occupational disease checklist and a copy of the June 11, 1997 statement from Twyla Faye Brewer.

By decision dated October 24, 2000, the Office denied reconsideration on the grounds that appellant had not submitted new or relevant evidence. The Office found that the September 14, 2000 letter requesting reconsideration merely repeated her previous contentions regarding the issuance of subpoenas for administrative documents. The Office further found that the documents submitted accompanying the September 14, 2000 letter were merely photocopies of evidence previously of record and were therefore insufficient to require a review of her case on the merits.

The Board finds that the Office, in its October 24, 2000 decision, properly denied appellant's request for reconsideration on its merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under section 8128.³

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.⁴ As appellant filed her appeal with the Board on January 24, 2001, the only decision properly before the Board is the October 24, 2000 decision denying appellant's request for a merit review.

Under section 8128(a) of the Act,⁵ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁶ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”⁷

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁸

³ See 20 C.F.R. § 10.606(b)(2)(i-iii).

⁴ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b) (1999).

⁷ 20 C.F.R. § 10.606(b).

⁸ 20 C.F.R. § 10.608(b).

In support of her request for reconsideration, appellant submitted a September 14, 2000 letter reiterating her request for the Office to issue subpoenas in an attempt to establish that she was harassed and forced to work excessive overtime. Appellant also repeated arguments previously of record asserting that she was harassed and discriminated against by her supervisors. The Board finds that the arguments contained in the September 14, 2000 letter are merely repetitious of appellant's allegations previously of record and duly considered by the Office, and are therefore insufficient to warrant a merit review. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁹

Accompanying the September 14, 2000 letter, appellant submitted copies of documents previously of record: a copy of an occupational disease checklist; the May 20, 1998 and October 7, 1999 decisions; the November 10, 1998 request to issue subpoenas; performance ratings for the periods July 1, 1989 to June 30, 1990, July 1, 1992 to April 30, 1993, and May 1, 1993 to April 30, 1994; the October 1, 1992 letter to appellant from Sylvia Miller; the June 11, 1997 statement from Ms. Brewer. The Office has previously considered all of these documents on their merits. They are thus wholly insufficient to require reopening appellant's case for a merit review. Therefore, the Office's October 24, 2000 decision denying appellant's request for a merit review is proper under the law and facts of this case.

⁹ *James A. England*, 47 ECAB 115 (1995).

The decision of the Office of Workers' Compensation Programs dated October 24, 2000 is hereby affirmed.

Dated, Washington, DC
December 28, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member