

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENCARNACIO M. WEAVER and U.S. POSTAL SERVICE,
POST OFFICE, Aurora, CO

*Docket No. 01-978; Submitted on the Record;
Issued December 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record and finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Appellant filed her appeal with the Board on February 21, 2001. Therefore, the only decision before the Board is the Office's December 5, 2000 nonmerit decision, denying appellant's request for reconsideration of the Office's October 15, 1999 denial of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.³ A timely request for reconsideration may be granted if the Office determines that the employee has

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8101 *et seq.*; § 8128(a).

³ Section 10.606(b)(2)(i-iii).

presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2) of the Act.⁴

In her October 11, 2000 request for reconsideration, appellant contended that her supervisor, Ken Price, ordered her to bring medical documentation for her disability claim to the employing establishment on her day off on July 10, 1999, and in doing so, made the action related to her work duties. Appellant contended that her presence at the office benefited the employing establishment in making it aware of her restrictions and limitations. Appellant therefore asserts that Mr. Price's order to her constitutes a compensable factor of employment.

Appellant contended that Mr. Price was not actually appellant's supervisor and rejected the documents when appellant brought them, demonstrating that it was unreasonable for him to give appellant that order. Appellant contended that when appellant arrived at the office, Mr. Price ordered her to clock in and to go to work, specifically to complete paperwork for her claim. Appellant contended that Mr. Price yelled, screamed and used profanity toward her on July 10, 1999. Appellant also contended that Mr. Price ordered her off the premises. Appellant contended all these actions by Mr. Price constitute compensable factors of employment.

By letter dated November 6, 2000, the employing establishment challenged appellant's contentions. Two statements dated September 8 and October 12, 1999 from Mr. Price and a witness statement dated October 12, 1999 from Greg Jadzak were in the record.

By decision dated October 15, 1999, the Office denied appellant's request for reconsideration, stating that appellant did not meet the requirements for establishing that she sustained an injury in the performance of duty.

By letter dated October 11, 2000, appellant requested reconsideration of the Office's decision.

By decision dated December 5, 2000, the Office denied appellant's request for reconsideration.

The arguments appellant raised in her reconsideration request were addressed by the Office in its October 15, 1999 decision. Appellant did not submit any new evidence. The evidence submitted by appellant is repetitive of previously submitted evidence and does not support appellant's claim. 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, the Office acted within its discretion in denying her reconsideration request.

⁴ Section 10.608(a).

The December 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member