

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. TORME and U.S. POSTAL SERVICE,
BEVERLY HILLS POST OFFICE, Dallas, TX

*Docket No. 00-842; Submitted on the Record;
Issued February 7, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
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 her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On January 24, 1997 appellant, then a 40-year-old distribution/window clerk, filed an occupational disease claim (Form CA-2) alleging that she developed emotional stress, headaches, depression and anxiety in October 1996 as a result of her federal employment. In support of her claim, appellant submitted statements from Dr. Damian D. Garcia, a Board-certified family practitioner and from Vicki James, a counselor.

By letter dated March 26, 1997, the Office informed appellant that more factual and medical information was needed to determine whether she was eligible for benefits under the Federal Employees' Compensation Act.¹

On April 4, 1997 appellant submitted a 14-page detailed response of alleged employment factors which contributed to her emotional condition, as well as copies of several Equal Employment Opportunity (EEO) grievances that she had filed. The Office also requested and received a statement from appellant's supervisor.

By decision dated October 8, 1997, the Office denied appellant's claim, stating that none of the factors identified by appellant as having caused her stress were compensable factors of employment.

By letter dated October 16, 1997, appellant requested an oral hearing, which was held on July 30, 1998. The hearing representative, by decision dated and finalized September 14, 1998,

¹ 5 U.S.C. §§ 8101-8193.

affirmed the Office's October 8, 1997 decision, stating that the evidence of record failed to establish that appellant sustained an injury in the performance of duty.

On September 13, 1999 appellant requested reconsideration and submitted a September 10, 1999 report from Dr. Louis E. Deere, an osteopathic physician.

By decision dated September 23, 1999, the Office denied merit review.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

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 appeal with the Board on December 11, 1999, the only decision properly before the Board is the Office's September 23, 1999 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's October 8, 1997 or September 14, 1998 decisions.

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 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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁴ 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.⁵

In this case, the September 10, 1999 report from Dr. Deere is not relevant and pertinent to the grounds on which the Office denied appellant's claim. The relevant issue is whether appellant established that her emotional condition resulted from compensable factors of employment. Whether the implicated factors of employment occurred as alleged is a factual issue not a medical issue. While Dr. Deere discusses the onset of appellant's condition in July 1996 and subsequent work history, his report does not offer any factual corroboration of appellant's allegations. Nor does Dr. Deere address the one compensable factor established by the record -- the October 1996 bumping incident on the workroom floor.

Appellant has not established that the Office abused its discretion in denying her request for a merit review of its October 8, 1997 decision because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not

² 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

The decision of the Office of Workers' Compensation Programs dated September 23, 1999 is hereby affirmed.

Dated, Washington, D.C.
February 7, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member