

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN C. JENKINS and U.S. POSTAL SERVICE,
POST OFFICE, Mount Vernon, AL

*Docket No. 99-1506; Submitted on the Record;
Issued January 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for merit review.

On February 15, 1996 appellant, then a 52-year-old postmaster, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that on March 30, 1990 she realized that her stress and depression were due to factors of her employment.¹ In a February 15, 1996 statement, appellant detailed employment factors she believed caused her stress, which included an on-the-job robbery, an abduction at gunpoint, working long hours and the employing establishment's breach of its settlement agreement with her.² Appellant stopped work on January 18, 1994 and resigned from the employing establishment effective November 15, 1994.

By decision dated June 28, 1996, the Office denied appellant's claim on the grounds that as she failed to establish a compensable factor of employment she did not establish an injury in the performance of duty.

On July 17, 1996 appellant requested an oral hearing, which was held on April 2, 1997. By decision dated May 29, 1997, the Office hearing representative affirmed the Office's decision dated June 28, 1996 denying compensation.

In a letter dated August 9, 1997, appellant requested reconsideration, alleging that the employing establishment committed error and abuse in its administrative handling of appellant's

¹ This was assigned claim number 06-0651782.

² Appellant had previously filed an occupational claim alleging that her stress was due to factors of her employment on April 21, 1994. This claim was assigned claim number 06-0597715. The Office denied the claim on November 14, 1994 on the grounds that fact of injury had not been established as appellant failed to allege any employment factors.

claim and submitted evidence in support of her request. Appellant's counsel argued that the employing establishment violated a settlement agreement regarding appellant's disability retirement and that requiring appellant to withdraw her prior claim was a violation of 20 C.F.R. § 10.21.

By merit decision dated September 3, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification and that the settlement agreement was between appellant and the employing establishment and did not violate section 10.21.³

In a letter dated August 26, 1998, appellant requested reconsideration, and submitted a July 15, 1998 report from Dr. Barry C. Amyx, appellant's attending Board-certified psychiatrist, and resubmitted evidence from appellant's Merit System Protection Board (MSPB) appeal. In the letter, appellant reiterated her arguments regarding the August 19, 1994 settlement agreement.

By decision dated January 28, 1999, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was of a repetitious and cumulative nature and was insufficient to warrant a merit review.

The Board finds that the Office acted within its discretion in denying appellant's request for merit review.

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 with the Board.⁴ As appellant filed her appeal with the Board on April 29, 1999, the only decision before the Board is the Office's January 28, 1999 nonmerit decision, denying appellant's application for review. The Board has no jurisdiction to review the most recent merit decision dated September 3, 1997.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of a claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

Along with her letter requesting reconsideration, the material from the MSPB had already been consideration. Appellant reiterated her argument, which had been previously considered

³ 20 C.F.R. § 10.15 (1999).

⁴ *Jeanette Butler*, 47 ECAB 128, 129-30 (1995).

⁵ 20 C.F.R. § 10.606(b)(2) (1999)

⁶ 20 C.F.R. § 10.608(b) (1999).

and rejected, that the Office erroneously applied or interpreted a point of law by failing to find a violation of 20 C.F.R. § 10.21.⁷ Nor did she advance a point of law or a fact not previously considered by the Office. Appellant merely requested reconsideration of the denial of her claim and reiterated allegations previously considered and rejected. She also submitted a new report from Dr. Amyx. However, the medical report was not relevant as appellant had not established that her claimed emotional condition was due to a compensable factors of employment.⁸ Therefore, the Office properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated January 28, 1999 is hereby affirmed.

Dated, Washington, DC
January 9, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁷ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material, which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496, 502-503 (1992) (unless a compensable factor of employment is established, it is not necessary to review the medical evidence).