

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI M. SOLOMON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA

*Docket No. 00-197; Submitted on the Record;
Issued July 26, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether, for claim No. 13-1058760, the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a); and (2) whether, for claim No. 13-1098436, the Office properly found that appellant's reconsideration was not timely filed and failed to present clear evidence of error.

On November 30, 1994 appellant, then a 47-year-old teller/cashier, filed an occupational claim, No. 13-1058760, alleging that she sustained stress at work. That claim primarily addressed a problem that arose from lost checks whereby cashiers, including appellant, were suspected of stealing them. It also addressed an issue of an overpayment by a cashier of \$500.00, appellant's fear of dangerous men showing up on the work premises and the occurrence of a bomb scare. Appellant indicated that she stopped working on November 28, 1994. On February 23, 1996 appellant filed an occupational claim, No. 13-1098436, for emotional stress she indicated that she did not miss work.

By decision dated June 6, 1995, the Office denied the claim, No. 13-1058760, stating that appellant did not establish that the claimed medical condition arose out of the performance of duty.

By decision dated April 8, 1997, the Office denied appellant's request for reconsideration.

Appellant requested an oral hearing before an Office hearing representative which was held on February 28, 1996.

By decision dated April 10, 1996, the Office hearing representative affirmed the Office's April 8, 1997 decision.

By letter March 29, 1997, appellant requested reconsideration of the Office's decision.

By letter dated April 8, 1997, the Office denied modification.

By letter dated April 6, 1998, appellant requested reconsideration of the Office's decision.

By decision dated July 8, 1998, the Office denied modification.

By letter dated May 25, 1999, appellant requested reconsideration of the Office's decision and submitted additional evidence.

In her request for reconsideration, appellant requested that the two case files, No. 13-1098436 and No. 13-1058760, be combined. Appellant stated that the Office of Personnel Management's (OPM) award of disability retirement verified that her medical condition was caused by the employing establishment's actions. Appellant submitted a letter from OPM dated October 31, 1998, informing her that her disability retirement had been approved. Appellant stated that the Social Security Administration's (SSA) March 1999 decision awarding her disability based on the medical reports, of Dr. Walter Ogden, a family practitioner and Dr. David W. Webb, a Board-certified internist, that the employing establishment caused her medical condition. Appellant submitted the SSA decision dated March 31, 1999, which stated that appellant met their medical rules to qualify for disability benefits based on the reports from the St. Jude Medical Center, Dr. Ogden and Dr. Phillip M. Carman, a psychologist, dated January 15 and 21 and March 18, 1999, respectively. The report also stated that the SSA would soon decide if she met their nonmedical rules.

Appellant stated that the employing establishment withheld three forms from her disability retirement application and lied on the SF 1801 B, C, E that she did not have a fitness-for-duty examination. In an undated Equal Employment Opportunity (EEO) counselor's report, with a final interview date of September 9, 1998, the counselor stated that appellant explained that when she submitted her application for disability retirement, her application was held up because certain forms were missing and she felt that the employing establishment was trying to block approval of her application by intentionally omitting forms from the packet they sent her. As a remedy, appellant sought reinstatement of her employment. Upon being told that the missing forms for her application had been obtained and her application was complete, appellant stated that she was not satisfied and indicated that she would file a formal complaint. She also felt the information which had been submitted to OPM was "lies."

Appellant stated that Dr. Webb agreed with her treating physician, Dr. Carman, that the employing establishment caused her medical condition. In his report dated November 4, 1997, Dr. Webb stated that he evaluated appellant and reviewed information provided by her psychologist and opined that appellant was disabled and unable to perform her former position. In the September 24, 1998 report, the EEO counselor stated that the employing establishment stated that it had essentially submitted the forms to the best of its knowledge and had committed an oversight in stating that appellant had not had a fitness examination. Appellant felt that the information the counselor submitted contradicted information previously received and stated that she would file a complaint. Further, appellant stated that Mr. Feistman, the Chief of Fiscal, wrongfully terminated her and withheld her last paycheck after fraudulently claiming that she owed a bill, which he never presented to her and that a week after taking this information to the

“VAIG,” she received a death threat. Appellant submitted earnings and leave statements with month and dates on them but no year.

By decision dated June 10, 1999, the Office denied appellant’s request for reconsideration.

Regarding appellant’s claim No. 13-1058760, the Board finds that the Office properly refused to reopen appellant’s case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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 As appellant filed the appeal with the Board on August 30, 1999 the only decision before the Board is the Office’s June 10, 1999 decision denying appellant’s request for reconsideration.

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 meets at least one of the standards described in section 10.606(b)(2).³

None of the evidence appellant submitted is relevant to whether her emotional condition arose from her employment. The decisions awarding benefits from the SSA and the OPM are not probative on appellant’s entitlement to benefits under the Act. The Board has held that the findings of other administrative agencies are not dispositive of proceedings under the Act which is administered by the Office and the Board.⁴ Dr. Webb’s November 7, 1997 report, in which he stated that appellant was disabled and unable to perform her position and the EEO counselor’s statement in the September 24, 1998 report that Dr. Webb concurred with appellant’s treating physician, does not constitute new evidence establishing appellant’s emotional condition is causally related to her employment. In its decisions, the Office found that appellant did not establish any compensable factors of employment. Dr. Webb’s opinion and the counselor’s report does not affect this finding. Further, the medical evidence is not relevant if there are no compensable factors of employment.⁵ While appellant’s contention regarding Mr. Feistman’s

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

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

⁴ *Daniel Deparini*, 44 ECAB 657, 660 (1993); *Richard L. Ballard*, 44 ECAB 146, 151 (1992).

⁵ *See Diane C. Bernard*, 45 ECAB 223, 228 (1993).

wrongful termination of her, his withholding her last paycheck and her receiving a death threat are new contentions, appellant did not present sufficient evidence to show this happened or that it caused her emotional condition. It, therefore, is not relevant. Moreover, appellant's contention that the employing establishment intentionally omitted forms in her disability retirement application and erroneously stated that she had not had a fitness-for-duty examination in an effort to prevent her from obtaining benefits was not corroborated by any evidence and does not support that her emotional condition arose from her employment. The evidence appellant submitted to support that contention is, therefore, not relevant or pertinent. Further, appellant previously raised her contention that her two stress claims, No. 13-1058760 and No. 13-1098436, should be combined before the Office and it, therefore, is repetitive.

Inasmuch as appellant has not shown that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office and did not submit relevant and pertinent new evidence not previously considered by the Office, she has failed to establish her claim, No. 13-1058760.

Appellant's claim, No. 13-1098436, filed on February 23, 1996 addressed whether appellant's emotional stress resulted from receiving a written reprimand from her supervisor on September 26, 1995 for leaving a window open, a request by appellant's supervisor for her medical records at an unspecified time, the employing establishment's refusal to approve a compressed work schedule allegedly in retaliation for appellant's EEO activity and her supervisor's asking her to accompany a coworker to take a sick cat which might have rabies or human immunodeficiency virus (HIV) to the veterinarian when she had no annual or sick leave (although the supervisor stated she would not charge her leave). Further, appellant contended that upon receiving a reassignment, she did not get a desk when she asked for one, she was not assigned work and had to seek out work to do from people, she did not receive the appropriate training and she was concerned that stray cats on the hospital grounds could transmit HIV to humans. Appellant also referred to incidents of having a heavy workload, receiving derogatory, verbal abuse as in being sworn at by a coworker and fearing she would lose her job.

By decision dated September 26, 1996, the Office denied appellant's claim, No. 13-1098436, stating that appellant had failed to establish any conditions in the performance of her duties as a federal employee.

Appellant requested an oral hearing before an Office hearing representative which was held on September 23, 1997.

By decision dated March 4, 1998, the Office hearing representative affirmed the Office's September 26, 1996 decision. In the decision, the hearing representative referred to the employing establishment's investigation regarding missing funds.

By letter dated May 25, 1999, appellant requested reconsideration of the Office's decision. Her request in claim No. 13-1098436 is similar to her May 25, 1999 request for reconsideration for claim No. 13-1058760.

By decision dated June 10, 1999, the Office denied appellant's claim for No. 13-1098436, stating that her May 25, 1999 letter requesting reconsideration was filed more than a year after the Office's March 4, 1998 decision and, therefore, was untimely.

The Board finds that the Office properly found that appellant's request for reconsideration in claim No. 13-1098436, was untimely and failed to present clear evidence of error.

Since appellant filed her appeal with the Board on August 30, 1999, the only decision before the Board for appellant's claim No. 13-1098436 is the Office's June 10, 1999 decision.⁶

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁷ The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.⁸ The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error by the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁹

The Board finds that, since more than one year has elapsed from the date of the Office's March 4, 1998 merit decision, to the date that appellant's request for reconsideration was filed, May 25, 1999, appellant's request for reconsideration is untimely. The Board further find that the evidence submitted by appellant in support of such request does not raise a substantial question as to the correctness of the Office's March 4, 1998 decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim.

In this case, the arguments appellant raised and the evidence she submitted, which as noted, are identical to the arguments and evidence she submitted for her other claim, No. 13-1058760, do not show clear evidence of error by the Office. The decisions by the SSA and OPM were not relevant. The medical evidence was not relevant given appellant did not establish compensable factors of employment. Further, appellant's contention that the employing establishment withheld certain documents from her disability application and "lied" in presenting information to her or OPM and that Mr. Feistman wrongfully terminated her were not relevant in

⁶ See *Oel Noel Lovell*, *supra* note 1.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.607(a); see also *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

⁹ 20 C.F.R. § 10.607(b); see *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

that they did not establish compensable factors of employment.¹⁰ Appellant, therefore, has not shown clear evidence of error and has failed to establish her claim.¹¹

The June 10, 1999 decisions of the Office of Workers' Compensation Programs for claim No. 13-1058760 and for claim No. 13-1098436 are, therefore, affirmed.

Dated, Washington, DC
July 26, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ See, e.g., *Beverly Diffin*, 48 ECAB 125, 128 (1996).

¹¹ It appears there was some overlap between appellant's two claims, No. 13-1058760 and No. 13-1098436 in that appellant's being accused of theft in claim No. 13-1058760 was referred to by the Office hearing representative in claim No. 13-1098436. However, regardless of any overlap, appellant did not present evidence to show the Office abused its discretion in denying her claim in No. 13-1058760 or that the Office committed clear evidence of error in No. 13-1098436.