

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PERLITA C. DeGUIA and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, San Francisco, CA

*Docket No. 00-1645; Submitted on the Record;
Issued July 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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 March 15, 1998 appellant, then a 50-year-old letter sorting machine operator, filed a notice of occupational disease and claim for compensation, alleging that she suffered from stress, headache, dizziness, loss of appetite, lack of sleep, anxiety, nervousness and depression as a result of her receiving a notice of termination due to "unfounded allegations." Specifically, she contended that she was terminated because she allegedly assaulted an acting supervisor, when in fact it was the acting supervisor who assaulted her. The employing establishment controverted appellant's claim. By decision dated July 29, 1998, appellant's claim was denied, as the Office found that appellant's emotional condition did not arise in the performance of duty. Specifically, the Office noted that appellant's February 23, 1998 notice of removal was a personnel matter not covered by the Federal Employees' Compensation Act, and that there was no evidence that the employing establishment erred, abused its authority or acted unreasonably in issuing the termination notice. It further noted that the medical notes were insufficient to establish that her condition was related to her employment.

On October 24, 1998 appellant requested reconsideration. By decision dated February 10, 1999, the Office reviewed appellant's case on the merits, and denied her request for reconsideration as it found that the evidence failed to establish an emotional condition due to work factors in the performance of duty. Once again, the Office noted that, even if performance of duty factors were identified, the medical evidence was insufficient to establish an emotional condition causally related to appellant's employment.

By letter dated February 7, 2000, appellant again requested reconsideration.

By decision dated February 10, 2000, the Office denied appellant's request for a review on the merits as it found that the evidence submitted in support of appellant's request for review was repetitious and not sufficient to warrant review of the prior decision.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on March 29, 2000, the only decision over which the Board has jurisdiction on this appeal is the February 10, 2000 decision denying reconsideration on the merits. The Board does not have jurisdiction over the earlier decisions on the merits of the claim.²

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any timely application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied without reopening the case for a review on the merits.⁵

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in denying appellant's request for reconsideration on the merits. In support of appellant's request, she submitted a grievance summary regarding the alleged assault and a statement by a person who investigated the claim and concluded that appellant's supervisor had no reason to make physical contact with her. The Board finds that appellant has set forth no new arguments which established that the Office made an erroneous application of law, has not advanced a relevant legal argument not previously considered and has not submitted any relevant and pertinent evidence not previously considered by the Office. In its prior decisions, the Office carefully reviewed the allegations by appellant that she was not at fault in the altercation, but rather, the supervisor was responsible. The Office noted that the grievance regarding the altercation had been resolved by reducing appellant's proposed removal to a letter of warning. In its February 10, 1999 decision denying reconsideration, the Office noted that the grievance documents support that the supervisor put her hand on appellant's finger while asking appellant to stop pointing in her face, and that this did not constitute an assault or an abuse of authority. Therefore, the Office had already reviewed the factors involved in the altercation, and determined that the incident did not involve an abuse of authority. The new documents rehashing the same old argument are repetitious of material already considered. Material which

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

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.⁶

The decision of the Office of Workers' Compensation Programs dated February 10, 2000 is affirmed.

Dated, Washington, DC
July 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).