

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY R. CUMMINGS and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Greensboro, NC

*Docket No. 00-1955; Submitted on the Record;  
Issued July 11, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained an emotional or disabling medical condition on September 10, 1998 causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the March 8, 2000 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative that appellant has not established that he sustained an emotional condition in the performance of duty.

The Board also finds that the Office properly denied further merit review. On March 27, 2000 appellant requested reconsideration and submitted additional evidence. In its decision dated April 11, 2000, the Office denied appellant's request, finding the evidence submitted irrelevant to the issue in this case and therefore insufficient to warrant merit review.

The Board further finds that the Office in its decision properly denied appellant's request for consideration on the merits under 5 U.S.C. § 8128(a) on the basis that her/his request for reconsideration did not meet the requirements set forth under section 8128.<sup>1</sup>

Under section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal

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<sup>1</sup> See 20 C.F.R. § 10.606(b)(2)(i-iii).

<sup>2</sup> 5 U.S.C. § 8128(a).

regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits if her/his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that Office erroneously applied or interpreted a specific point of law;  
or

“(ii) Advances a relevant legal argument not previously considered by the Office,  
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered  
by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which fails to meet at least one of the standards described in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

In the present case, appellant’s claim was denied on the basis that he had not substantiated a compensable factor of employment to establish an emotional condition arising from the events of September 10, 1998 or established that an injury was sustained in the performance of duty on September 10, 1998. The additional evidence appellant submitted with his request for reconsideration consists of evidence that does not address the issue in this case, which is whether appellant has established a compensable factor of employment.<sup>5</sup> The additional evidence was, therefore, properly found to be irrelevant and not sufficient to require reopening of appellant’s case for further review of the merits of her claim pursuant to section 8128.

The Board has held that, as the only limitation on the Office’s authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>6</sup> The evidence submitted with appellant’s reconsideration request consists of undated statements by appellant, evidence previously considered, letters from the employing establishment, an article from the postal supervisor and a

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<sup>3</sup> 20 C.F.R. § 10.606(b).

<sup>4</sup> 5 U.S.C. § 10.608(b).

<sup>5</sup> Appellant resubmitted a May 26, 1999 Form CA-17 signed by Dr. Roberts; undated statements by appellant; a November 12, 1999 letter from the employing establishment regarding exclusion from the FY-99 EAS merit performance and the EVA variable pay program; appellant’s November 14, 1999 letter regarding the November 15, 1999 letter; a November 3, 1999 letter from the employing establishment issuing an award for 37 years of government service; a December 6, 1999 letter from the employing establishment responding to his November 14, 1999 letter; an article from the postal supervisor, a copy of a criminal court file listing; Paul Stokes as being indicted for simple assault; assault with a deadly weapon, communicating threats and expired registration card/tags with court dates.

<sup>6</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

copy of a criminal court file listing. The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

The decisions of the Office of Workers' Compensation Programs dated April 11 and March 8, 2000 are hereby affirmed.<sup>7</sup>

Dated, Washington, DC  
July 11, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> On appeal, appellant attempted to submit additional evidence in support of his claim. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. 20 C.F.R. § 501.2(c).