

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD J. HOLLAND and DEPARTMENT OF ENERGY,  
WESTERN AREA POWER ADMINISTRATION, Loveland, CO

*Docket No. 00-2361; Submitted on the Record;  
Issued July 10, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration under 5 U.S.C. § 8128(a).

On April 27, 1998 appellant, then a 58-year-old electrician, filed an emotional claim alleging that after his shoulder injury at work on January 22, 1991, his supervisors, Dennis Miller and Philip B. Johnson began harassing him. He stated that they began writing negative performance appraisals and many of their reports were untrue or described incidents where he was not even present. Appellant stated that the stress of the harassment built up and he began to suffer from the stress in March 1993. He stated his doctor described his condition as anxiety panic disorder. Appellant submitted evidence to support his claim including statements about how work caused his condition, copies of performance appraisals, medical evidence and documents pertaining to his contention that he was compelled to choose disability retirement when he wanted to choose Federal Employees' Compensation Act benefits.

In a statement dated October 14, 1994, appellant stated that after his January 22, 1991 accident, he kept getting reprimands for very minor reasons that normally would not even be noticed. On July 25, 1991 he was told that he was being considered for a discharge for not applying for disability. The July 25, 1991 letter from the employing establishment stated that appellant's removal was being proposed because he was physically unable to perform critical functions of his position and noted that they provided him information for filing for disability retirement. Appellant also stated that he was unable to obtain jobs he applied for over a three-year period even though he had satisfactory performance appraisals.

In a statement dated June 30, 1998, appellant stated that after the January 1991 injury, his supervisors began to assemble documentation for the purpose of terminating his employment, and reiterated that he started receiving poor performance appraisals and numerous written and oral reprimands on a regular basis. He stated that Mr. Miller began secretly to contact his doctor, Dr. Rita Emch, to report his observations of his medical conditions and to obtain medical information to be used to terminate his employment. Appellant also stated that he felt a lot of

stress resulting from the loss of his employment since February 1994 when he applied for medical disability.

By decision dated August 4, 1998, the Office denied his claim, stating that the evidence of record failed to establish that the claimed injury occurred in the performance of duty.

By letter dated August 7, 1998, appellant requested an oral hearing before an Office hearing representative which was held on January 12, 1999. At the hearing, he stated that after he injured himself in 1991, Mr. Johnson told him that he was going to fire him for his second arm injury. Appellant stated that he was constantly harassed and given reprimands. He also stated that he was made to feel that he had to accept retirement disability or be fired. Appellant stated that he refused to sign the reprimands and he was given no union representation. He stated that Mr. Miller called Dr. Emch whom he was not seeing at that time. Appellant testified he filed grievances with the union but no action was taken. He believed Dr. Emch gave medical information to the employing establishment that would assure he went on disability retirement. Appellant reiterated that Mr. Miller and Mr. Johnson began writing up work performance evaluations which were unfair and untrue and he was denied a job transfer by Gloria L. Bogans.

By decision dated March 8, 1999, the Office hearing representative affirmed the Office's August 4, 1998 decision.

By letter dated August 15, 1999, appellant requested reconsideration of the Office's decision and submitted three Board cases referenced by the Office hearing representative in his decision. He reiterated that Mr. Miller and Mr. Johnson harassed him in the workplace by giving him poor and untrue performance appraisals without allowing him the required union representation, Mr. Miller contacted Dr. Emch in an attempt to medically force him out of his previous job and Ms. Bogans interfered with his request to transfer to another department.

By decision dated August 23, 1999, the Office denied appellant's request for reconsideration.

By letter dated February 25, 2000, appellant requested reconsideration of the Office's decision and submitted additional evidence. He submitted a copy of the Office hearing representative's decision, a statement of his professional employment history, a statement related to his September 1993 performance appraisal and a witness statement dated September 12, 1991 from four coworkers. Appellant submitted several certificates of training dated from December 30, 1988 through August 1993, an undated page of his performance rating and witness statements dated August 7, 1995 from Bruce Westerfield and from Paul J. Rovin dated January 24, 1978. Further, he submitted performance appraisals dated February 12, 1985, July 7, 1986, November 17, 1987, February 5, 1990, April 29, 1991, May 5, 1990, January 24, 1992, April 19, 1993, a statement dated June 10, 1993 and a performance improvement plan dated January 24, 1994. Appellant also submitted administrative documents from the employing establishment including "Record[s] of Discussion" dated June 12, 1991 and May 4, 1992, a memorandum dated May 6, 1992 from the acting area manager, an excerpt from a performance appraisal dated February 26, 1993 stating that appellant's knowledge of the use and care of the test equipment was unacceptable dated February 26, 1993 which appellant signed in protest, an annual development plan dated February 26, 1993 and medical evidence.

By decision dated March 24, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly denied appellant's requests for reconsideration under 5 U.S.C. § 8128(a).

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.<sup>1</sup> As appellant filed the appeal with the Board on June 22, 2000, the only decisions properly before the Board are the March 24, 2000 and August 23, 1999 decisions denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of 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.<sup>2</sup> 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).<sup>3</sup>

Regarding appellant's August 15, 1999 request for reconsideration, appellant submitted three Board cases and reiterated his contentions that Mr. Miller and Mr. Johnson harassed him in the workplace by giving him poor and untrue performance appraisals without allowing him the required union representation, Mr. Miller contacted Dr. Emch in an attempt to force him out of his job and Ms. Bogans interfered with his request to transfer to another department. 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. The Office therefore acted within its discretion in denying appellant's request for reconsideration in its August 23, 1999 decision.

Regarding appellant's February 25, 2000 request for reconsideration, appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. The training certificates dated from December 1988 through August 1993 are not relevant in establishing that appellant's supervisors harassed him.<sup>4</sup> Appellant's statement of his professional employment history was not relevant to establishing that he had been harassed. His statement related to his September 1993 performance appraisal was previously in the record. The witness statement from four coworkers dated September 12, 1991 was also previously in the record. The other two witness statements dated January 24, 1998 and August 7, 1995 merely indicate that

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

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

<sup>3</sup> 20 C.F.R. § 10.608(a).

<sup>4</sup> *See Barbara E. Hamm*, 45 ECAB 803, 809 (1994).

appellant was either a satisfactory or steady employee and do not add additional evidence on the issue of management's harassing appellant. The administrative documents appellant submitted from the employing establishment including the January 24, 1994 performance improvement plan, the excerpt from the performance appraisal rating his work unacceptable and the records of discussions dated June 12, 1991 and May 4, 1992 were duplicative of evidence appellant previously submitted. Although he had not previously submitted all the performance appraisals he submitted in his request, they do not present any new evidence to establish his emotional claim. The medical evidence appellant submitted was also duplicative of the medical evidence he previously submitted. In summary, he did not submit any relevant and pertinent new evidence not previously considered by the Office. Appellant also did not raise any new relevant legal argument or show that the Office erroneously applied or interpreted a specific point of law. The Office therefore acted within its discretion in denying appellant's reconsideration request.

The decisions of the Office of Workers' Compensation Programs dated March 24, 2000 and August 15, 1999 are hereby affirmed.

Dated, Washington, DC  
July 10, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member