

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Covina, CA

*Docket No. 99-2194; Submitted on the Record;
Issued May 15, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On June 11, 1996 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition while in the performance of duty, due to harassment and discrimination in the workplace. Appellant submitted factual and medical evidence to support his claim.

By decision dated January 30, 1997, the Office denied the emotional condition claim on the basis that appellant failed to establish that he was injured in the performance of duty as alleged. In a letter dated February 7, 1997, appellant requested an oral hearing at which he testified and submitted additional evidence.

By decision dated January 5, 1998, an Office hearing representative affirmed the prior decision. By letter dated November 3, 1998, appellant requested reconsideration and submitted additional evidence.

By decision dated March 23, 1999, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of the case.

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.¹ As appellant filed his appeal with the Board on June 29, 1999, the only decision properly before the Board is the March 23, 1999 denial of merit review.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Federal Employees' Compensation Act,² 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 regulations,³ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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 does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁴

The Office previously determined that appellant failed to meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty. On reconsideration, appellant argued that the employing establishment committed error and abuse in handling administrative matters and that his emotional condition sustained in reaction to the error and abuse should be covered by the Act. Specifically, appellant argued that the employing establishment conducted unwarranted investigative interviews over the course of 19 months, for reasons including harassment, malicious prosecution, defamation, discrimination and retaliation. He argued that each of the five 14-day suspensions he was issued was preceded by an unwarranted and predetermined investigative interview and his discriminatory removal was preceded by three investigative interviews held in March 1994, July 1995 and April 1996, which all amounted to "harassment sessions." Appellant also argued that the employing establishment, in issuing two emergency no-pay suspensions, sought to portray him as a violent person, build a disciplinary record against him and inflict financial hardship and mental abuse by wrongfully withholding his pay. He further argued that he was targeted for removal by Postmaster Karen Martin and the employing establishment, in retaliation of his work to assist other employees in Equal Employment Opportunity (EEO) hearings.

While appellant submitted voluminous exhibits to support his contentions, the majority of the evidence merely consisted of indexes and excerpts from arbitration proceedings, excerpts from employee testimony given in EEO proceedings and investigative interviews. It also included narrative statements made by appellant regarding nonpayment of sick leave, denied continuation of pay and similar administrative matters, and statements from other employees who discussed their own grievances. The Board notes that a portion of this evidence is duplicative of evidence of record and has already been considered by the Office. The remaining evidence is cumulative and does not constitute relevant and pertinent evidence not previously

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ 20 C.F.R. § 10.608(b).

considered. The underlying issue is whether there was error or abuse on the part of the employing establishment and the evidence submitted does not address that issue.

As appellant's reconsideration request did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying the request.

The decision of the Office of Workers' Compensation Programs dated March 23, 1999 is affirmed.

Dated, Washington, DC
May 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member