

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY E. McQUEENEY and U.S. POSTAL SERVICE,  
POST OFFICE, Edison, NJ

*Docket No. 00-1866; Submitted on the Record;  
Issued November 15, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further reconsideration.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review.

On May 2, 1995 appellant, then a 36-year-old mailhandler, filed a Form CA-1, notice of traumatic injury and claim for compensation alleging that on April 28, 1995 her supervisor yelled at her and she experienced a tension headache and rapid heartbeats. The Office assigned the case claim number A2-6965562. On July 14, 1995 appellant filed a claim for a recurrence of disability on June 16, 1995. On July 19, 1995 the Office accepted the claim for panic anxiety disorder, transitory. On August 2, 1995 the Office accepted appellant's recurrence of disability claim. Appellant returned to work on January 9, 1996. Appropriate compensation was paid for all relevant periods of disability.

On February 11, 1998 appellant filed a Form CA-1, notice of traumatic injury and claim for compensation, alleging that on January 30, 1998 she experienced a panic attack when she was approached by her supervisor. The Office assigned the case claim number A2-0739810. By decision dated May 28, 1998, the Office denied the claim finding that appellant suffered a reaction in response to a proper administrative action taken by her supervisor, which was not in the performance of duty and therefore not compensable. On January 30, 1998 appellant was reprimanded for walking through an unsafe area. She contended that she was unfairly reprimanded and "singled-out" by her supervisor. By decision dated March 1, 1999, an Office hearing representative affirmed the May 28, 1998 denial. The hearing representative found that being admonished for a safety hazard was an administrative function in which appellant failed to establish any abuse or error on the part of her supervisor.

In an April 19, 1999 letter, appellant's attorney requested reconsideration. By decision dated June 18, 1999, the Office denied appellant's reconsideration request on the grounds that appellant neither raised a substantive legal questions nor included new and relevant evidence.

By letter dated December 30, 1999, appellant's attorney requested reconsideration. Attached with the request was a December 22, 1999 medical report from Dr. Peter M. Crain, a Board-certified psychiatrist.

By decision dated March 27, 2000, the Office denied reconsideration on the grounds that the evidence submitted was not germane to the issue of whether the claimed the factor of employment occurred in the performance of duty.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.<sup>1</sup> As appellant filed her appeal on May 2, 2000 the only decisions over which the Board has jurisdiction on this appeal are the June 18, 1999 and the March 27, 2000 decisions denying her requests for reconsideration.

The Board finds with respect to the Office's June 18, 1999 and March 27, 2000 decisions denying reconsideration, that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (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 new evidence not previously considered by the Office.<sup>2</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>3</sup>

Appellant's April 19, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office.

In support of her request for reconsideration of the hearing representative's March 1, 1999 decision, appellant's attorney submitted a December 22, 1999 medical report of Dr. Crain, a Board-certified psychiatrist and appellant's treating physician.

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<sup>1</sup> See 20 C.F.R. § 501.3(d).

<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>3</sup> 20 C.F.R. § 10.608(b) (1999).

In this report, Dr. Crain reviewed appellant's record regarding the April 28, 1995 incident and the medical treatment rendered thereafter along with the materials relating to appellant's workers' compensation claims. Results of a mental status examination were provided along with diagnoses of panic disorder with agoraphobia; psychogenic skin eruptions; and, migraine headaches with significant tension component. Dr. Crain opined that the incident of January 30, 1998 was similar to that of April 28, 1995 with respect to erroneous conduct executed by a supervisor, followed by unjust reprimands of appellant's behavior, which each time precipitated panic attacks. Dr. Crain opined that the accident of January 30, 1998 was not an aggravation, but a new injury which rendered appellant totally disabled. He further stated that the injury of January 30, 1998 caused a severe exacerbation of appellant's preexisting disability that originated from the accident of April 28, 1995. The Board notes, however, that the Office did not accept that the incident of January 30, 1998 arose within the performance of duty. The record does not establish that appellant's supervisor was in error in reprimanding appellant on that date. For this reason, the medical evidence submitted on reconsideration is not relevant or pertinent to the issue in this case as the physician relied upon an inaccurate factual history. Consequently, this evidence is not sufficient to warrant reopening the record for merit review as it is not germane to the relevant issue in this case.

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated March 27, 2000 and June 18, 1999 are hereby affirmed.

Dated, Washington, DC  
November 15, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member