

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CECELIA WAITERS and DEPARTMENT OF THE ARMY,  
OAKLAND ARMY BASE, Oakland, CA

*Docket No. 01-1919; Submitted on the Record;  
Issued August 13, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On May 10, 1991 appellant, then a 42-year-old child care worker, filed a notice of occupational disease claiming that she suffered from job stress beginning May 3, 1991 when a fellow employee threatened her, threatened to kill her mother and used profanity.<sup>1</sup> On March 12, 1992 the Office accepted appellant's claim for adjustment disorder.<sup>2</sup> Appellant returned to the same work site on November 30, 1992.

On February 16, 1993 appellant filed a claim for recurrence alleging conflict with her supervisor beginning January 14, 1993. She stated that, even though the employee who originally threatened her was no longer there, she began to experience symptoms of anxiety and depression as a result of returning to the same work site. She stated that she did not feel supported or protected by her supervisor, and that she was not understood, both at the time of her original trauma in 1991 and upon her return to work in 1992. She also indicated that she felt humiliated and demeaned as a result of being demoted to a lower position when she returned to the work site in 1992.

The Office treated appellant's recurrence claim as a new occupational disease claim stating that appellant identified new work factors as attributing to her current condition.<sup>3</sup> By

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<sup>1</sup> Appellant also filed a Form CA-1 on May 10, 1991 stating that the employee also threatened to kill her.

<sup>2</sup> This decision is not found in the record.

<sup>3</sup> The Office treated appellant's recurrence as a new occupational disease claim in a May 26, 1994 decision, however, this decision is not found in the record. It is referred to in the hearing representative's March 23, 1995 decision.

decision dated September 13, 1993, the Office denied appellant's claim since she did not establish that her emotional condition occurred within the performance of duty.

By letter dated September 26, 1993, appellant requested an oral hearing.<sup>4</sup> By decision dated March 23, 1995, the hearing representative affirmed the Office's previous decision.

Appellant requested reconsideration and the Office denied her requests for merit reviews on May 13 and June 24, 1996. By decision dated November 17, 1998, the Board remanded the case to the Office for further development of the medical evidence. In a merit decision dated March 29, 1999, the Office denied modification of the previous decision. Appellant requested reconsideration and the Office denied modification again on March 29, 2000.

By letter dated March 19, 2001, appellant requested reconsideration and submitted a March 7, 2001 report from Dr. George Demetrius Karalis. By decision dated April 16, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious in nature and insufficient to warrant merit review.

The Board has duly reviewed the case record and finds that the Office abused its discretion by denying further merit review.

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>5</sup> Because more than one year has elapsed between the issuance of the Office's last merit decision on March 29, 2000 and June 26, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the March 29, 2000 decision and any preceding decisions. Therefore, the only decision before the Board is the Office's April 16, 2001 nonmerit decision denying appellant's application for review of its March 29, 2000 decision.

Under section 10.606 of the Office's implementing regulations, a claimant seeking reconsideration must set forth argument or evidence which 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>6</sup> If a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits.<sup>7</sup> However, the Board has noted that the requirement for reopening a claim for merit review does not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The requirement pertaining to the submission of evidence in support of reconsideration only necessitates that the evidence be relevant and pertinent and not previously

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<sup>4</sup> The transcript is not found in the record.

<sup>5</sup> 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Pamela I. Holmes*, 49 ECAB 581 (1998).

considered by the Office.<sup>8</sup> If the Office should determine that the new evidence lacks substantive probative value, it may deny modification of the prior decision but only after the case has been reviewed on the merits.

In this case, appellant submitted a March 7, 2001 report from Dr. Karalis in support of her request for reconsideration. The Board finds that Dr. Karalis' report is relevant since he links appellant's 1993 recurrence to the original accepted injury in 1991. The Board notes that the Office erred by treating appellant's 1993 recurrence as a new occupational disease claim. Even though new employment factors may have contributed to appellant's condition when she returned to the work site in 1993, Dr. Karalis clearly opines that appellant's problem which arose in 1993 is directly attributable to her 1991 accepted employment injury. He states:

“At this point, I can only state that ongoing psychotherapy, which includes evaluation and re-evaluation of the facts the patient has stated, leads me to reaffirm my earlier conclusion -- that her [appellant's] current psychiatric illness is the direct and proximate result of job stress, and that it constitutes a *recurrence* of the 1991 [a]djustment [d]isorder with depressive features (which was accepted by [the Office]).

“It was my belief when I authored my 1994 and 1995 psychiatric reports that this was a *recurrence*, and any new external precipitating stresses, while they may have been temporarily irritating to the patient, did not rise to the threshold of being *causes* of her current psychiatric condition. All of these psychiatric symptoms are the direct and proximate result of the May 3, 1991 date of injury.”

Dr. Karalis clearly links appellant's 1993 recurrence to the original 1991 accepted employment injury and states that any new precipitating stresses were only temporary aggravators of her condition and did not rise to the level of outright causes.

The Board finds that the evidence submitted by appellant is new to the record and has not previously been considered by the Office. The materials are relevant, such that the Board must find that the Office abused its discretion in denying appellant's request for reconsideration. The case shall be remanded to the Office for further merit review. After such further development as is deemed necessary, the Office shall issue a decision on the merits of the case.

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<sup>8</sup> *Paul Kovash*, 49 ECAB 350 (1998).

The April 16, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
August 13, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member