

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN H. RAWLINS and U.S. POSTAL SERVICE,
LONG BEACH GENERAL MAIL FACILITY, Long Beach, CA

*Docket No. 02-657; Submitted on the Record;
Issued August 19, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion under section 8128(a) of the Federal Employees' Compensation Act by denying appellant's request to reopen the case for a merit review.

This is the third appeal before the Board in this case. Appellant originally filed a claim for occupational stress sustained on or before October 19, 1990, which she attributed to a pattern of harassment, discrimination and disciplinary actions beginning in 1969. The Office denied appellant's claim on January 16, 1992 on the grounds that she had not established any compensable factors of employment. She requested reconsideration, which was denied by a July 28, 1993 decision. Appellant then filed an appeal with the Board. By decision dated May 31, 1995,¹ the Board affirmed the Office's July 28, 1993 decision, finding that the Office did not abuse its discretion in refusing to reopen appellant's case on the merits as the evidence submitted was cumulative and repetitious.

Appellant again requested reconsideration by a June 18, 1995 letter and submitted an April 26, 1994 affidavit by Sandy Guerra, a labor relations assistant, Equal Employment Opportunity Commission (EEOC) and union arbitration representative at the employing establishment. Ms. Guerra asserted that the employing establishment tried to dismiss appellant for cause in retaliation for her EEO and related complaints. The Office denied reconsideration in July 18, 1995 and January 21, 1997 decisions, finding Ms. Guerra's statement irrelevant and immaterial. By decision issued April 19, 1999,² the Board affirmed the Office's January 21, 1997 decision, finding that Ms. Guerra's affidavit was vague and insufficient to substantiate any compensable factor of employment. The Board found that the affidavit did not advance new or relevant factual or legal evidence or establish legal error by the Office in denying appellant's

¹ Docket No. 94-92.

² Docket No. 97-1294.

June 18, 1995 request for a merit review. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Following her second appeal to the Board, appellant sent a July 10, 1999 letter to the Board, alleging that a docket clerk informed her that a March 13, 1999 document was not in her case record. In a January 20, 2000 letter, appellant once again requested reconsideration by the Office. She alleged that the Office committed legal error by failing to properly develop her claim and did not notify her of deficiencies in all evidence submitted. Appellant asserted that the specificity of her allegations against the employing establishment compelled the Office to review all evidence submitted on the merits. She also alleged that the Office denied her request for reconsideration as it was biased against her.

By merit decision dated March 2, 2000, the Office denied modification of the Board's April 19, 1999 decision and all prior decisions on the grounds that the evidence submitted was insufficient to warrant such modification. The Office explained that it was not obligated to inform her of defects in evidence submitted following a review of the initial submission of evidence, if those subsequent submissions are also insufficient to meet the burden of proof. The Office also found that it could not review the March 13, 1999 document as it was not of record.

In a March 29, 2000 letter, the Office stated that, as appellant had found the March 13, 1999 documents to which she referred in her January 20, 2000 request for reconsideration, the Office would vacate the March 2, 2000 decision to enable appellant to submit those documents for review.

Appellant again requested reconsideration in March 12 and April 5, 2000 letters. She submitted copies of the March 13, 1999 documents. These documents consist of evidence previously of record, as well as a highly detailed 169-page letter dated March 5, 1999 with meticulous descriptions of 121 alleged employment incidents to which appellant attributed her emotional condition. She newly alleged that the Office erred by conducting conference calls with supervisor Audrey Vance Lopez on January 13 and 14, 1992 without appellant's knowledge. She asserted that this account of events was sufficient to establish the described incidents as factual and that these incidents were compensable factors of employment. Appellant also alleged that the Board committed various clerical errors, which prejudiced the outcome of her appeal.

By decision dated October 18, 2000, the Office denied modification of the prior decisions on the grounds that the evidence submitted was insufficient to warrant such modification. The Office found that most of appellant's submission consisted of copies of evidence previously of record and thus would not be considered again. The Office found that her allegations that the Board committed clerical error was irrelevant in determining whether she had established any compensable employment factors. The Office further found that there were supervisory statements of record refuting appellant's chronology of the 121 alleged employment incidents. The Office also found that appellant had failed to submit credible evidence corroborating her account of events. The Office also found that the issue regarding the January 1992 conference calls was irrelevant to her claim.

Appellant disagreed with this decision and in a letter dated October 5, 2001 and received by the Office October 15, 2001, again requested reconsideration. She asserted that the March 2, 2000 decision tainted her case and that her March 5 and 13, 1999 documents, including the 121 incident chronology, represented the weight of the factual evidence in her claim and were sufficient to establish compensable factors of employment.

By decision dated October 30, 2001, the Office denied reconsideration on the grounds that the evidence submitted was repetitious in nature and, therefore, insufficient to warrant reopening her case on the merits. The Office found that the October 5, 2001 letter did not present new, relevant legal arguments or factual evidence. The Office also found that, although the March 2, 2000 decision had not been formally vacated, the Office had conducted a full merit review of the March 13, 1999 documents and the incident chronology. The Office commented that appellant wanted “another reconsideration examiner to go over all of the evidence in the hopes that ‘a compensable factor’ of the employment will be found.”

Appellant filed her appeal with the Board on February 5, 2002.

The Board finds that the Office did not abuse its discretion under section 8128(a) of the Act by denying her request for a merit review.

The Board finds that the Office, in its October 30, 2001 decision, properly denied appellant’s October 5, 2001 request for reconsideration on its merits under 5 U.S.C. § 8128(a), on the basis that the request did not meet the requirements set forth under section 8128.³

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.⁴ As appellant filed her appeal with the Board on February 5, 2002, the only decision over which the Board has jurisdiction is the October 30, 2001 decision, denying her request for a merit review. The Office issued no other decisions in appellant’s case dated between February 5, 2001 and February 5, 2002.

Under section 8128(a) of the Act,⁵ 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,⁶ which provides that a

³ See 20 C.F.R. §10.606(b)(2)(i-iii).

⁴ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b) (1999).

claimant may obtain review of the merits if his or her written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that Office erroneously applied or interpreted a 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].”⁷

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.⁸ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Act.⁹

The critical issue in this case is whether appellant has established any compensable factors of employment and submitted sufficient evidence establishing a causal relationship between those factors and her claimed emotional condition. All evidence submitted in support of her request for reconsideration must be evaluated as to whether it is relevant to that issue.

The only evidence appellant submitted in support of her October 5, 2001 request for reconsideration is the October 5, 2001 letter, requesting reconsideration. In this letter, appellant asserted that the March 2, 2000 decision tainted her case. She also alleged that the 121-incident chronology she submitted with the March 13, 1999 documents was sufficient to meet her burden of proof in establishing compensable factors of employment and a causal relationship between those factors and the alleged emotional condition.

The Board finds that the October 5, 2001 letter does not contain new, relevant factual evidence or establish legal error by the Office. The October 5, 2001 letter merely repeats appellant’s prior assertion that her account of events, in the absence of any credible corroborating evidence, was sufficient to meet her burden of proof. This argument is utterly without merit and is irrelevant to the critical, threshold issue of establishing a compensable factor of employment through the submission of detailed, reliable corroborating evidence.

The Board notes that it is clear from the evidence of record that appellant believes she was the object of harassment, discrimination and retaliation by the employing establishment. Her account of events beginning in 1973 is replete with identifying details such as dates, names, locations, excerpts from alleged conversations and names of witnesses. However, appellant has still failed to submit sufficient evidence to corroborate even one of the 121 alleged incidents.

⁷ 20 C.F.R. § 10.606(b).

⁸ 20 C.F.R. § 10.608(b).

⁹ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

Also, her account of events is almost entirely refuted by statements of record from the supervisors and officials alleged to have perpetrated the harassment, discrimination and retaliation described.

As the October 5, 2001 letter requesting reconsideration failed to demonstrate legal error by the Office, advance a new, relevant legal argument or present new, relevant evidence, the Office's October 30, 2001 decision denying appellant's request for reconsideration was proper under the law and the facts of this case.

The decision of the Office of Workers' Compensation Programs dated October 30, 2001 is hereby affirmed.

Dated, Washington, DC
August 19, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member