U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LADENE DILLIHUNT and U.S. POSTAL SERVICE,
POST OFFICE, Berkeley, CA

Docket No. 00-1446; Submitted on the Record;
Issued January 25, 2002

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

This case is before the Board for the second time. Previously, the Board found that appellant had not established that she sustained an emotional condition while in the performance of duty. The Board noted that appellant had not submitted any evidence to substantiate her allegations of sexual harassment by her supervisor and that an Office hearing representative, who had the opportunity to observe appellant's demeanor and assess her credibility, found that appellant's testimony was not credible.[1]

By letter dated October 5, 1998, appellant's representative requested reconsideration and submitted additional evidence. Most of this evidence came from appellant's lawsuit against the employing establishment for sexual harassment and discrimination in U.S. District Court. It consisted of depositions, appellant's amended complaints for damages and injunctive relief; and a February 1998 settlement agreement whereby the employing establishment paid appellant and her attorneys the sum of $175,000.00 and agreed to reemploy her at a different facility.

By decision dated February 12, 1999, the Office found that the additional evidence was insufficient to warrant modification of its prior decisions.

By letter dated February 14, 2000, appellant's representative requested reconsideration, and submitted additional evidence, a June 21, 1993 letter from appellant to her union vice-president complaining about mistreatment by a coworker, the union vice-president's July 22, 1993 reply regarding his investigation of appellant's complaint, the union vice-president's memorandum of an interview with a supervisor undertaken as part of this investigation and appellant's letter to the union president expressing her dissatisfaction with the investigation.

[1] Docket No. 96-1852 (issued June 1, 1998).

Also submitted was a declaration of appellant's attorney in U.S. District Court that, through subpoena, he had obtained telephone billing records and credit card billing records of the supervisor alleged to have harassed appellant. The attorney stated, "These items tended to corroborate several of the allegations made by [appellant]." Medical reports were also submitted.

By decision dated February 15, 2000, the Office found that the additional evidence was immaterial and insufficient to warrant review of its prior decisions.

The only decision before the Board on this appeal is the Office's February 15, 2000 decision finding that appellant's request for reconsideration was insufficient to warrant review of its prior decisions. Since more than one year elapsed between the date of the Office's most recent merit decision on February 12, 1999 and the filing of appellant's appeal on March 22, 2000 the Board lacks jurisdiction to review the merits of appellant's claim.[2]

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under section 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[3] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[4]

Appellant's February 14, 2000 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law. Legal arguments contained in this

[2] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board must be filed within one year of the date of the Office final decision being appealed.

[3] *Eugene F. Butler*, 36 ECAB 393 (1984).

[4] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

request for reconsideration were for the most part previously advanced in appellant's October 5, 1998 request for reconsideration and already considered by the Office. Appellant did advance a legal argument not previously considered -- that the Office should have reviewed the medical evidence -- but this argument is not relevant because the Office is not required to consider the medical evidence when the claimant has not established any compensable employment factors.[5]

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. Because appellant has not established any compensable employment factors, the medical reports she submitted are not relevant. The letters regarding her alleged mistreatment by a coworker are not relevant to whether appellant was sexually harassed by her supervisor nor is the declaration of appellant's attorney that he had obtained telephone and credit card records of appellant's supervisor. Because appellant has not satisfied any of the three criteria of 20 C.F.R. § 10.606(b)(2), the Office properly refused to reopen her case for further review of the merits of her claim.

The February 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 25, 2002

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[5] *Peggy Ann Lightfoot*, 48 ECAB 490 (1997).