

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNNEA S. ST. JOHN and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 01-977; Submitted on the Record;
Issued January 4, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on February 21, 2001, the only decision before the Board is the Office's November 22, 2000 decision, denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that 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.² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meet at least one of the standards described in section 10.606(b)(2).³

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

On January 6, 1998 appellant, then a 54-year-old customer service supervisor, filed an emotional claim, alleging that she sustained anxiety, stress, tension and a “sick feeling” from being constantly intimidated, abused and discriminated against. She stated, in part, that she received constant and continual unclear and everchanging instructions from the postmaster, Dale Ozimek.

By decision dated May 27, 1998, the Office denied her claim, stating that the evidence failed to establish the work events and allegations arose in and out of the performance of duty.

By letter dated May 24, 1999, appellant requested reconsideration of the decision and submitted additional evidence.

By decision dated August 24, 1999, the Office denied appellant’s request for modification.

By letter dated August 17, 2000, the appellant requested reconsideration of the Office’s decision and submitted additional evidence.

By decision dated November 22, 2000, the Office denied appellant’s request for reconsideration.

In her request for reconsideration, appellant contends that she was denied training to which she was entitled, she was unfairly issued a letter of warning, she was forced to give her password to a clerk, she was not given proper assistance or allowed sufficient time to do her stamp stock and Mr. Ozimek improperly chastised her for criticizing an employee’s driving performance when it was part of her assigned duties to monitor the employee. Appellant contends that she worked in a hostile environment, was subject to possible sexual harassment and found the “loud, abusive cussing and foul language used on the floor” stressful. She cited two incidents in 1996 where on one day one employee refused to follow her instructions and another day an employee did not perform his work assignment. Appellant stated that Mr. Ozimek did not support her in attempting to enforce discipline. She referred to an incident in September 1996 where Mr. Ozimek prevented her from completing her work by giving her unclear instructions, arguing with her over how to perform her work and appellant stated the office was understaffed. Appellant stated that because of problems in the office she was compelled to work overtime on a regular basis which caused her stress. She cited an altercation with an employee, Harold Watson, on October 4, 1997 over the use of an extension cord and referred to disputes with Mr. Ozimek over her use of leave.

Regarding all these incidents and appellant’s general contention that Mr. Ozimek was hostile and abusive towards her, appellant contends that the Office erred in its prior decisions in not finding that they constituted compensable factors of employment. The Office, however, addressed appellant’s contentions extensively in its prior decisions. Although appellant contended that the Office mischaracterized her contentions, such as finding that appellant’s distress that Mr. Ozimek chastised her for criticizing an employee’s driving performance constituted fear of working in a certain environment and therefore his action was not

compensable, appellant has not raised any valid legal arguments that these incidents constituted compensable factors of employment.⁴

Much of the evidence appellant submitted in support of her request for reconsideration was contained in the record. The letter dated January 28, 1998 from Shirley Lathem, an Employee Assistance Program (EAP) counselor, the letter dated May 11, 1998 from Cheryl Duchnak, a labor relations specialist, the letter dated July 1, 1999 from Harry Myers, the operations manager, the first page of a letter apparently from Mr. Ozimek dated June 30, 1999, an undated letter from Mr. Ozimek addressed to Gloria J. Tolliver, a letter dated March 9, 1998 from Kelli S. Curtis to Karen Horvath and a letter dated April 9, 1998 from Mr. Ozimek were contained in the record.

The other evidence appellant submitted was routing slips dated October 3 and 15, 1996 and September 12, 1997, an undated disciplinary action proposal for the employee, Leslie Rycroft, appellant's note dated October 15, 1996 addressing a female employee's violation of the dress code and five carriers' returning late, appellant's handwritten notes to "Dr. Knott," the undated second page of a letter from appellant stating her work environment was hostile and a letter from Mr. Ozimek dated October 30, 1998 addressing appellant's work schedule and the fact that appellant claimed she was unhappy with it. Appellant also submitted earning statements for pay periods "21" through "26," 1996, a statement dated August 1, 2000 showing that she was treated for anxiety and depression from January 1993 through August 1999, a letter addressed to appellant dated August 11, 2000 showing dates of service with EAP, a copy of a regulation addressing an employee's obtaining a fitness-for-duty certification and an undated page apparently from appellant's notes describing the issue of dress code with an employee. All this evidence is duplicative of evidence contained in the record and does not show that the Office erred in finding that appellant did not establish any compensable factors of employment.⁵ Appellant handwrote notes on many of the documents she submitted but they do not further support her contentions.

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, she has failed to support her request for reconsideration. The Office acted within its discretion in denying her request.

⁴ See *Frank B. Gwozdz*, 50 ECAB 434, 435-46 (1999); *Bonnie Goodman*, 50 ECAB 139, 143 (1998).

⁵ See *Frank B. Gwozdz*, *supra* note 4.

The Office of Workers' Compensation Programs' decision dated November 22, 2000 is hereby affirmed.

Dated, Washington, DC
January 4, 2002

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member