

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN OSBORNE and U.S. POSTAL SERVICE,
GULFGATE STATION, Sarasota, FL

*Docket No. 01-1461; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

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

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

This case has been before the Board previously. By decision dated June 14, 2000, the Board found that appellant failed to establish that he sustained an emotional condition in the performance of duty.¹ The law and facts as set forth in the previous decisions of the Board and Office hearing representative are herein incorporated by reference.

Subsequent to the Board's June 14, 2000 decision, on August 23, 2000 appellant, through his representative, requested reconsideration and submitted new evidence and argument. In a November 2, 2000 decision, the Office denied modification of its October 1, 1998 decision. On February 20, 2001 appellant's representative again requested reconsideration and presented additional argument. By decision dated April 10, 2001, the Office denied appellant's reconsideration request, finding that the argument presented by appellant had been considered previously. The instant appeal follows.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Appellant contends that his emotional condition was caused by the management decisions of Walter Zilinsky, his supervisor, who prevented him from performing his regular work duties. With his reconsideration request dated August 13, 2000, appellant submitted portions of the employing establishment procedural manual. His representative argued that procedures found in section 44 of the manual clearly indicate that undelivered mail is to be

¹ Docket No. 99-531.

processed upon return to the employing establishment and appellant was thus in the performance of duty when he was prevented from carrying out this procedure by Mr. Zilinsky. It is well established that the assignment of work is an administrative matter of the employing establishment and not a duty of the employee.² Absent evidence to support a finding of error, it is not a compensable factor. The employing establishment manual does not establish error on the part of management in directing appellant to perform other job duties, as directed.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for review.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).³ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific 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.⁴ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

With his February 20, 2001 request for reconsideration, appellant's representative again argued that appellant was in the performance of duty when Mr. Zilinsky prevented him from processing mail. The Board finds that this argument had been addressed in previous decisions of the Office dated May 13, 1997, October 1, 1998 and November 2, 2001, as well as the Board decision dated June 14, 2000. The Office, therefore, properly denied appellant's request for reconsideration.

² See *Janet D. Yates*, 49 ECAB 240 (1997).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

The April 10, 2001 and November 2, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member