

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT K. OJA and DEPARTMENT OF THE ARMY,  
CORP OF ENGINEERS, Anchorage, AK

*Docket No. 01-194; Submitted on the Record;  
Issued June 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On February 17, 1998 appellant, then a 48-year-old manager, filed a notice of occupational disease alleging that he suffered from major depressive disorder as a result of harassment, reprisals and discrimination due to his assistance with an inspector general investigation and whistleblower testimony given before Congress on May 3, 1990.

In a November 17, 1998 decision, the Office denied appellant's claim for compensation on the grounds that he failed to allege a compensable factor of employment.

Appellant requested a hearing, which was held on April 26, 1999.

In a decision dated August 13, 1999, an Office hearing representative affirmed the Office's April 26, 1999 decision. The Office hearing representative found that appellant's allegations of harassment were unsupported in the record by any factual evidence such as "witness statements/testimony."

Appellant subsequently requested reconsideration in a letter dated April 5, 2000. In support of his request, he submitted a notebook containing 313 pages of documentation marked Appendix A, B, C and D. He also submitted four witness statements from Deborah Fletcher, Don Kohler, Jeffrey Towner and Richard Gutlebar.

In a decision dated June 2, 2000, the Office denied appellant's reconsideration request finding the evidence submitted to be either cumulative or not sufficiently relevant to the case to warrant a merit review.

The Board has duly reviewed the case and finds that the Office abused its discretion in denying appellant's request for reconsideration on the merits under section 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.<sup>1</sup> The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> 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.<sup>3</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits."<sup>5</sup>

With respect to appellant's evidence on reconsideration, the Board finds that the Office erred by not finding the witness statements to be new and relevant evidence. The Office hearing representative specifically informed appellant that his case was lacking because he had not submitted any corroborating witness statements. Since the witness statements address the conduct at the employing establishment during the period in question, the evidence is relevant and satisfies the requirement for reopening the case for merit review.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>2</sup> 20 C.F.R. § 10.606(b) (1999).

<sup>3</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>4</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>5</sup> 20 C.F.R. § 10.608 (1999).

<sup>6</sup> See generally *Paul Kovash*, 49 ECAB 350 (1998) (the requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof).

The decision of the Office of Workers' Compensation Programs dated August 13, 1999 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
June 26, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member