

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM D. LUCAS and U.S. POSTAL SERVICE,
POST OFFICE, Columbia, SC

Docket No. 02-220; Submitted on the Record;
Issued May 22, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

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

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for reconsideration.

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 October 22, 2001, the only decision before the Board is the Office's June 21, 2001 decision, denying appellant's request for reconsideration.

On May 14, 1999 appellant, then a 48-year-old postal clerk, filed an occupational disease claim, alleging that he experienced extreme anger, high blood pressure headaches, jaw clenching and mental anguish caused by job stress. He stated that he was outraged by the injustice and misrepresentation by the Equal Employment Opportunity Commission (EEOC) he had received since September 1994 when he filed EEO complaints and he could not "condone the criminal activity" at the workplace which had victimized him.

By decision dated September 8, 1999, the Office denied the claim, stating that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

By letter dated October 5, 1999, appellant requested an oral hearing before an Office hearing representative, which was held on March 27, 2000. Appellant stated that the EEOC

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

made false statements, he had confrontations with his supervisor and he was discriminated against. He stated that all the EEO complaints he had filed (six altogether) had been dismissed or there had been no findings of discrimination except for the last one filed in March 1999 which had not yet been decided. Appellant testified that he left work on July 14, 1998 and returned to a different job on December 15, 1999.

By decision dated June 9, 2000, the Office hearing representative affirmed the Office's September 8, 1999 decision.

By letter dated June 1, 2001, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a report from his treating physician, Dr. Donna M. Schwartz-Watts, a psychiatrist, dated June 7, 2001. In her report, Dr. Schwartz-Watts considered appellant's history of injury and stated that his reports of mistreatment by staff and his resultant emotional problems "remain causally related to his employment." She stated that appellant was obsessed with job problems and he had problems dealing with a supervisor at work and with the postal system itself.

By letter dated June 21, 2001, the Office denied 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: (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 meets at least one of the standards described in section 10.606(b)(2).³

In this case, the evidence appellant submitted in support of his request for reconsideration, Dr. Schwartz-Watts' June 7, 2001 medical report, is not relevant to his claim. Her report does not establish a compensable factor of employment.⁴ When a compensable factor of employment has not been established, the medical evidence need not be considered.⁵ Since appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, he has failed to establish his claim.

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

⁴ See *Frank B. Gwozdz*, 50 ECAB 434, 435-37 (1999); *Bonnie Goodman*, 50 ECAB 139, 143-44 (1998).

⁵ See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

The June 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 22, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member