

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTHER M. BURBANK and U.S. POSTAL SERVICE,
POST OFFICE, Olney, IL

*Docket No. 00-2386; Submitted on the Record;
Issued October 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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).

On July 3, 1995 appellant, then a 50-year-old distribution clerk, filed a claim for an occupational disease for "stress" that she attributed to fear of losing her job "because of what appears to be staged set-ups." Appellant described the specific incidents and conditions of her employment to which she attributed her emotional condition, including alleged sexual harassment and a tense relationship with the postmaster at the employing establishment. She also submitted medical evidence, including reports of her three psychiatric hospitalizations in 1995.

By decision dated December 11, 1997, the Office found:

"It has been determined that you have failed to meet your burden of proof in establishing that any of the claimed employment incidents, events, disputes or alleged employment stressors occurred as alleged and further, you have not established that they occurred in the performance of duty as interpreted under the Federal Employees' Compensation Act. You have also failed to establish that the instances of alleged harassment or discrimination occurred as alleged and, there is no evidence that the EEO [Equal Employment Opportunity] complaints regarding such alleged instances were resolved in your favor. You have also failed to establish that you have any diagnosed medical condition established as being medically connected to any specific employment factors which have been established as having occurred as alleged and which are further established as having occurred in the performance of duty, as alleged."

By letter dated January 8, 1998, appellant requested a hearing. At the hearing held on December 17, 1998 she submitted a statement further describing specific incidents of her

employment and statements from coworkers concerning the work environment at the employing establishment.

By decision dated March 18, 1999, an Office hearing representative found that appellant's problems revolved around her relationship with her postmaster, that there was no evidence that the postmaster violated any rule or regulation or that she harassed or demeaned appellant or inappropriately conducted herself and that appellant had not shown error or abuse regarding her work assignments or schedule, which were administrative functions of the employing establishment. The hearing representative found that since appellant had not substantiated any compensable factor of employment, it was unnecessary to address the medical evidence.

By letter received by the Office on March 10, 2000, appellant requested reconsideration. She submitted a statement from the former president of her local union stating that there was "a continuing calculated pattern of harassment" by the postmaster toward appellant. She also submitted a May 27, 1999 report from Dr. Eugene S. Kostiuik, a Board-certified psychiatrist, stating that appellant's "psychotic depression and delusions were intertwined with her relationship with [her] postmaster...."

By decision dated April 24, 2000, the Office found that the additional evidence was insufficient to warrant a review, as the statement from the union president was cumulative and, in light of appellant's failure to substantiate a compensable employment factor, the medical evidence was irrelevant.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the 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 --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 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.¹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²

The Office hearing representative's March 18, 1999 decision from which appellant requested reconsideration found that appellant had not substantiated any compensable factors of employment. The Board has stated that when a claimant does not establish any compensable employment factors, medical evidence need not be considered.³ For this reason, the May 27, 1999 report from Dr. Kostiuk does not constitute probative or relevant evidence. The statement from the local union president also does not constitute relevant new evidence, as it is repetitive of a June 1, 1998 statement from another former local union president.

The April 24, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 11, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

¹ *Eugene F. Butler*, 36 ECAB 393 (1984).

² *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

³ *Margaret S. Krzycki*, 43 ECAB 496 (1992).