

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEFANIA CALDARONE and U.S. POSTAL SERVICE,
BERGEN STATION, Jersey City, NJ

*Docket No. 01-352; Submitted on the Record;
Issued October 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration.

On July 6, 1999 appellant, then a 49-year-old letter carrier, filed a notice of traumatic injury alleging that she suffered work-related stress. She stated that on July 2, 1999 her management kept her from going outside to deliver mail, she was not given a CA-1 Form and was given "the run around" and was told to leave work early. Appellant stated that these incidents caused her blood pressure to rise to a dangerously high level and caused her to suffer a headache, blurred vision and dizziness.

Appellant submitted an emergency room report indicating that she was treated for hypertension on July 2, 1999.¹ Dr. Bellino stated that appellant had gotten into an argument at work, which caused her headache. He diagnosed her with "headache, resolved" secondary to stress. Appellant also submitted a July 29, 1999 report from Dr. Howard S. Levine, who indicated that appellant had been under his care since July 2, 1999 for work-related stress, anxiety and hypertension. He stated that appellant had completely recovered from the July 2, 1999 incident and could return to her regular duties. Appellant also indicated, in a personal statement, that she tried to return to work on July 31, 1999, but was told to go home and wait until she was contacted by the employing establishment's physician. She also submitted a letter of apology from the employing establishment for contacting her physician without her approval.

By decision dated September 2, 1999, the Office denied appellant's claim since she did not establish any compensable factors of employment.

¹ Dr. Michael Bellino indicated that appellant has a history of hypertension, aneurysm and partial blindness in the right eye.

By letter dated October 26, 1999, appellant requested reconsideration. She stated that her anxiety attack might have been a recurrence of an earlier June 28, 1999 accepted employment injury.² Appellant also submitted two grievances filed against the employing establishment in support of her request.

By decision dated December 29, 1999, the Office denied appellant's request for reconsideration stating that the evidence submitted was irrelevant and insufficient to warrant a merit review.

Appellant submitted a second personal statement dated January 8, 2000 again stating that the July 2, 1999 incident was a recurrence of an earlier June 28, 1999 accepted employment injury. She did not submit any new evidence.

By decision dated May 9, 2000, the Office denied appellant's request for reconsideration.

By letter dated May 28, 2000, appellant requested reconsideration and submitted a May 26, 2000 letter from Dr. Levine, who stated that he originally examined appellant on June 28, 1999 due to a work-related injury³ and released her to work on July 2, 1999. He indicated that when she returned to work on July 2, 1999 she reexperienced symptoms from the prior June 28, 1999 injury.

By decision dated September 1, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the refusal of the Office, in its decisions dated December 29, 1999, May 9 and September 1, 2000, to reopen appellant's case for further consideration of the merits of her claim, did not constitute an abuse of discretion.

The Office decisions before the Board on this appeal are the December 29, May 9 and September 1, 2000 decisions denying appellant's requests for reconsideration. More than one year has elapsed between the date of the Office's most recent merit decision on September 2, 1999, which denied appellant's claim for an emotional condition and the filing of appellant's appeal on October 11, 2000. As such, the Board lacks jurisdiction to review the merits of appellant's claim.⁴

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting 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

² There is no evidence of this accepted injury in the record.

³ In his previous report, Dr. Levine stated that he first examined her on July 2, 1999.

⁴ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office's final decision being appealed.

pertinent new evidence not previously considered by the Office.⁵ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁶

The Office denied appellant's claim on September 2, 1999 because she did not establish any compensable factors of employment as contributing to her alleged emotional condition. If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁷

When appellant first requested reconsideration on October 26, 1999, she submitted two grievances, grievance resolutions and her employer's letter of apology. The first grievance dated July 28, 1999 had two issues: (1) on June 28, 1999 management refused to pay appellant continuation of pay when she requested it for her condition which was caused by lack of air conditioning at work, and had to use sick leave; and (2) on July 2, 1999 management contacted appellant's physician without her knowledge to obtain information about the July 2, 1999 incident without her consent. As a resolution to the second issue, the employing establishment issued a letter of apology. The second grievance was regarding an incident which occurred on July 31, 1999 when appellant's management did not allow her to return to work until she met with the employing establishment's physician. As a resolution, appellant was compensated with administrative leave until the time she returned to work.

The Board finds that the grievances and letter of apology are irrelevant to the underlying issue in this case, since they do not address any employment factors which appellant claimed caused or contributed to her emotional condition on July 2, 1999. The factors appellant listed on her Form CA-1 were that management kept her from going outside to deliver mail, she was not given a Form CA-1 and was given "the run around" and was told to leave work early. Appellant did not allege that the grievances she submitted were work factors which attributed to her emotional condition on July 2, 1999. Neither grievance discussed or referenced July 2, 1999 or any events of that day. As the information submitted does not address any of the employment factors alleged to have contributed to appellant's condition, they are irrelevant and insufficient to reopen the case for a merit review.

Appellant also requested reconsideration on January 8, 2000 and stated that she experienced a recurrence on July 2, 1999, of the earlier June 28, 1999 accepted employment injury. Her statement regarding a recurrence is irrelevant in establishing any compensable work factors, which may have contributed to her emotional condition.⁸ Appellant in no way discussed or referenced the incidents of July 2, 1999. As such, the issue of recurrence is irrelevant in establishing compensable employment factors and insufficient to warrant a merit review.

⁵ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁶ 20 C.F.R. § 10.608(a).

⁷ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁸ The Board notes that appellant should file a claim for recurrence if she believes the July 2, 1999 incident is attributable to the June 28, 1999 accepted employment injury.

Lastly, appellant requested reconsideration on May 28, 2000 and submitted a May 26, 2000 report from Dr. Levine. Although Dr. Levine's report was new evidence not previously considered by the Office, the medical report is irrelevant in establishing any compensable work factors. As noted earlier, appellant must first establish compensable work factors which caused or contributed to her emotional condition. If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.⁹ As such, the Office properly found Dr. Levine's medical report to be irrelevant and insufficient to warrant a merit review.

Since appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office in any of her requests, she did not establish that the Office abused its discretion in denying her requests for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated September 1 and May 9, 2000 and December 29, 1999 are hereby affirmed.

Dated, Washington, DC
October 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

⁹ *Supra* note 6.