

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDNA M. DOAK and FEDERAL DEPOSIT INSURANCE  
CORPORATION, Arlington, VA.

*Docket No. 02-1043; Submitted on the Record;  
Issued October 1, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On December 16, 1994 appellant, then a 44-year-old senior tax specialist, filed an occupational disease claim alleging that she sustained stress and depression causally related to factors of her federal employment. In a statement accompanying the claim, an official with the employing establishment indicated that she was removed from employment on December 16, 1994 for "unapproved absences and other misconduct."

By decision dated September 27, 2000, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained an injury in the performance of duty. The Office found that she had not established any compensable factors of employment. The Office noted that reactions to the denial of sick leave and termination for absences were not covered employment factors absent evidence of error or abuse by the employing establishment.

By letter dated September 24, 2001, appellant requested an extension of time within which to request reconsideration of her claim. On October 15, 2001 she requested that the Office consider her request for an extension as a request for reconsideration.<sup>1</sup>

In a decision dated November 28, 2001, the Office found that appellant did not submit relevant evidence or present a new legal contention in support of her request for reconsideration and thus, denied review of its prior decision.

The Board finds that the Office properly denied appellant's request for reconsideration under section 8128.

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<sup>1</sup> By letter dated November 5, 2001, the Office informed appellant that the time limits for filing a request for reconsideration were established by law and could not be extended.

The only decision over which the Board has jurisdiction is the Office's November 28, 2001 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated September 27, 2000 and March 12, 2002, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision dated September 27, 2000.<sup>2</sup>

Section 10.606 of the Code of Federal Regulations provides 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>3</sup> Section 10.608 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.<sup>4</sup>

In support of her request for reconsideration, appellant submitted a letter to her supervisor dated December 7, 1993 in which she requested leave under the Family and Medical Leave Act of 1993. However, this evidence is of little relevance to the pertinent issue of whether the employing establishment committed error or abuse in matters regarding leave usage. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup>

Appellant noted, in her September 24, 2001 letter to the Office, that she had requested but not received information from the employing establishment regarding coworkers' complaints about the worksite environment. She also indicated that she had brought multiple lawsuits against the employing establishment and that with additional time she could submit documentation establishing discrimination. As appellant has not advanced a new and relevant legal argument, her statements are insufficient to warrant a review of her claim on the merits.

Appellant maintained that the employing establishment did not protect her from her supervisor's retaliatory actions because of an Equal Employment Opportunity (EEO) complaint filed by the supervisor against the employing establishment. However, there is no evidence of record which would show that her supervisor retaliated against her or that actions taken by the employing establishment constituted error or abuse. Appellant's new allegation, therefore, does not have sufficient legal basis to require a merit review of her claim for an emotional condition.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and

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<sup>2</sup> See 20 C.F.R. §§ 501.2(c); 501.3(d).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

probable deductions from known facts.<sup>6</sup> Appellant has made no such showing here and thus, the Board finds that the Office properly denied her application for reconsideration of her claim.

The decision of the Office of Workers' Compensation Programs dated November 28, 2001 is affirmed.

Dated, Washington, DC  
October 1, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).