

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARLENE HERREN and U.S. POSTAL SERVICE,  
POST OFFICE, Colorado Springs, CO

*Docket No. 03-683; Submitted on the Record;  
Issued April 24, 2003*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
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 August 21, 2000 appellant, then a 46-year-old window services technician, filed an occupational disease claim alleging that she sustained a psychological condition due to factors of her federal employment. The Office assigned the claim File Number A12-193100.

By decision dated December 27, 2000, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office found that appellant had not established any compensable factors of employment on or after February 1, 1999.

The record indicates that the Office accepted a prior claim by appellant, assigned File Number A12-180284, for an emotional condition. The Office approved appellant's claim for disability due to her accepted emotional condition from January 11 until February 22, 1999.

On January 19, 2001 appellant, through her attorney, requested a hearing. In a decision dated August 28 and finalized August 31, 2001, the hearing representative affirmed the Office's December 27, 2000 decision after finding that appellant had not established any compensable factors of employment.<sup>1</sup>

In a letter dated August 7, 2002, appellant, through her attorney, requested reconsideration of her claim and submitted additional medical evidence.

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<sup>1</sup> Regarding appellant's prior emotional condition claim, the hearing representative noted that, in a decision dated August 6, 1999, the Office had denied compensation after February 22, 1999 on the grounds that she had no further injury-related condition. The hearing representative further noted that the Office had denied modification of its August 6, 1999 decision on September 12, 2000. He indicated that he would address only incidents occurring after August 6, 1999.

By decision dated October 8, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant a merit review of its prior decision.

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

The only decision over which the Board has jurisdiction is the Office's October 8, 2002 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 finalized August 31, 2001 and January 21, 2003, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the decision finalized August 31, 2001.<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 her request for reconsideration, appellant, through her attorney, argued that her current emotional condition claim should be combined with her prior emotional condition claim and adjudicated as a recurrence of disability. Appellant's argument, however, is not relevant to the issue of whether she sustained an emotional condition arising out of employment factors subsequent to August 1999. Further, the Office previously noted that appellant had alleged factors already addressed in her prior claim and declined to readdress these allegations, noting that she could follow her appeal rights in that claim.<sup>5</sup>

Appellant submitted a medical report dated July 29, 2002 from Dr. Marita J. Keeling, a Board-certified psychiatrist, who opined that she had depression caused by compensable employment factors from her prior emotional condition claim. However, as the Office has not accepted any compensable employment factors in this claim, Dr. Keeling's report is not pertinent to the issue at hand.<sup>6</sup>

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> Appellant's representative indicated that appellant had filed a request for reconsideration in File Number A12-180284.

<sup>6</sup> See *Alberta Kinlock-Wright*, 48 ECAB 459, 461-62 (1997).

probable deductions from known facts.<sup>7</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 October 8, 2002 is affirmed.

Dated, Washington, DC  
April 24, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).