

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DYRETHA HAMBRIGHT and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Phoenix, AZ

*Docket No. 03-808; Submitted on the Record;
Issued August 1, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's January 7, 2002 request for reconsideration was insufficient to warrant merit review of the claim.

On March 29, 2000 appellant, then a 52-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on February 2, 1999 she sustained injuries to her head, neck, shoulder and stomach in a motor vehicle accident. In an accompanying statement, appellant noted that the accident occurred while she was driving to an assigned alternate worksite at Arcadia Station and that her home office was the Main Post Office. She believed she was in the performance of duty because she had passed her regular-duty station, the Main Post Office, on her way to the Arcadia Station. She believed she was "protected/covered one hour before and after" her schedule hours. In support of her contention, appellant noted that she was reimbursed for her mileage, she had to use her own car and that the accident occurred on the first day of inspections at the Arcadia Station.

The employing establishment controverted the claim on the basis that she was not in the performance of duty. The employing establishment stated that appellant was on a detail assignment to the Arcadia Station at the time of the accident and that she had fixed hours of duty. It also stated that appellant was not being paid mileage unless she traveled to another station from the Arcadia Station.

By decision dated April 21, 2000, the Office denied the claim for compensation as the claimed injury did not occur in the performance of duty, as required under the Federal Employees' Compensation Act.

Appellant requested an oral hearing in a letter dated May 2, 2000. A hearing was held on October 24, 2000, at which appellant testified and submitted evidence. The evidence submitted at the hearing included an October 22, 2000 letter from Peter Bethge, president, National Association of Postal Supervisors; a June 12, 2000 letter from Roy Gross, Officer-in-Charge;

detail assignments; clock rings and pay stubs; a January 3, 1998 notice of personnel action, an emergency room report; a telephone list; e-mail from Candice Green, a coworker and pages from the F-15 Handbook. Appellant testified that she was assigned to Capitol Station at the time of the accident and was not detailed to Arcadia Station as stated by the employing establishment. Next, she testified that she was not paid for travel to the Arcadia Station as a result of the accident, but that she had been paid when traveling to other stations. Regarding mileage payment, she stated that she would be paid for mileage from her home station, but not from her home, to the station she was working at. Appellant testified that since she is a salaried employee she gets standard pay and does not have any real start time or is not required to hit the time clock. She testified that she did not receive any written personnel action for a detail to the Arcadia Station. Appellant testified that she received her instructions by telephone as to where she was to perform route inspections.

In his June 12, 2000 letter, Mr. Gross stated that appellant did not work at the Arcadia Station or was scheduled there during 1999.

Mr. Bethge, in an October 22, 2000 letter, stated that appellant was in duty status at the time of the accident as she was traveling from her duty station to another station. He noted that appellant was used for special projects, which required her to travel around Phoenix. He noted that "When she reports to a Phoenix Station directly in the morning she is entitled to mileage from the MSCO's [Manager Customer Service Operations] office" and thus, she would be in duty status and entitled to mileage when reporting to a Phoenix Station in the morning. Lastly, he noted that at the time of the accident appellant "had just passed the [p]lant building and was on the way to the Arcadia Station. When she passed the plant she was entitled to mileage and was on the clock, in a pay status."

Subsequent to the hearing, appellant submitted additional evidence and corrections to the transcript. In an October 31, 2000 memorandum, Donna Spini, customer relations coordinator, stated that she was not approving appellant's PS Form 1164 claim for reimbursement for expenditures on official business for the period December 1998 through February 1999. She noted that "local travel would be paid for the travel on the route you were inspecting, but not from home or central office and back."

In a November 20, 2000 letter, the employing establishment responded to appellant's testimony. The employing establishment stated that appellant was not in a duty status at the time of the accident as she was on her way to the Arcadia Station for her first day of work in her 90-day detail.

By decision dated January 12, 2001, the hearing representative affirmed the denial of benefits.

Appellant's representative requested reconsideration by letter dated January 7, 2002 and submitted legal argument in support of her request.

By nonmerit decision dated February 28, 2002, the Office denied appellant's request for reconsideration.

The only decision before the Board on this appeal is the Office decision of February 28, 2002. Since more than one year elapsed from the date of issuance of the Office's January 12, 2001 merit decision to the date of the filing of appellant's appeal, February 10, 2003, the Board lacks jurisdiction to review this decision.¹

The Board finds that the Office properly determined that the January 7, 2002 request for reconsideration was insufficient to warrant merit review of the claim.

Section 8128(a) of the Federal Employees' Compensation Act² vests the Office with discretionary authority to determine whether it will review an award for or against compensation.³ Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.⁴

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁵ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁷

In the January 7, 2002 reconsideration request, appellant neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant's representative reiterated arguments made before the hearing representative that appellant's driving on the highway to go to work was in the performance of duty. Therefore, appellant's representative did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the

¹ See 20 C.F.R. § 501.3(d).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ *Raj B. Thackurdeen*, 54 ECAB ____ (Docket No. 02-2392, issued February 13, 2003); *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

⁵ 20 C.F.R. § 10.608(a).

⁶ 20 C.F.R. § 10.606(b)(1)-(2); see *Sharyn D. Bannick*, 54 ECAB ____ (Docket No. 03-567, issued April 18, 2003).

⁷ 20 C.F.R. § 10.608(b).

third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any evidence on reconsideration. As appellant failed to submit any evidence with her request for reconsideration, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant submitted no new relevant evidence, did not show that the Office erred in interpreting the law and regulations governing her entitlement to compensation under the Act, nor has she advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request.

The February 28, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁸

Dated, Washington, DC
August 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Board notes that appellant requested reconsideration by letter dated January 31, 2003. On February 21, 2003 appellant withdrew her request for reconsideration so she could pursue an appeal before the Board.