

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEWIS W. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lebanon, PA

*Docket No. 03-41; Submitted on the Record;
Issued February 11, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

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 30, 1999 appellant, then a 44-year-old housekeeping aid, filed a notice of occupational disease alleging that he suffered from emotional stress, depression and fear as a result of harassment at work. In a July 7, 2000 decision, the Office denied compensation on the grounds that appellant failed to allege a compensable work factor and was therefore unable to establish that he sustained an emotional condition in the performance of duty. The Office's decision was affirmed by an Office hearing representative on April 10, 2001.

In an April 8, 2002 letter, appellant requested reconsideration and submitted additional evidence. He states that there were three separate incidents of harassment as follows: (1) On October 13, 1999 a coworker, Irvin Erickson, made the comment that "People are saying you are a white man in a black man's skin"; (2) Mr. Erickson tried to initiate a conversation on October 18, 1999 and when appellant refused to talk to him, Mr. Erickson bumped up against appellant's shoulder stating, "Why won't you talk to me"; and (3) on October 19, 1999 Mr. Erickson smiled broadly at appellant on several occasions.

In a decision dated June 26, 2002, the Office denied appellant's request for reconsideration on the merits.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ Therefore, in this case, the Board only has jurisdiction to consider and decide the propriety of the Office's June 26, 2002 decision denying appellant's request for reconsideration. The Office's

¹ See 20 C.F.R. §§ 501.2(c), 501(3)(d)(2); *Earl David Seal*, 49 ECAB 152 (1997).

decision dated April 10, 2001 was not issued within one year of appellant's appeal on October 15, 2002.

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

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The regulations provide 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.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits."⁶

Appellant provided a copy of an Employees' Compensation Appeals Board decision entitled, *Abe E. Scott*, Docket No. 92-1444.⁷ This case involved a claim for an emotional condition, and is used as a reference for Board case law on establishing compensable work factors. Although the case is relevant to the general issue of how to establish a compensable work factor, it does not specifically pertain to appellant and is insufficient to warrant a merit review of the case. The case cited does not show that appellant alleged a compensable work factor and is therefore not relevant to the instant claim.

The record contains a final agency decision by the Equal Employment Opportunity Commission (EEOC) on a harassment complaint filed by appellant on December 16, 1999. The EEOC decision dismissed appellant's harassment complaint for failure to state a claim. The Board notes that findings of other administrative agencies are not determinative with regard to proceedings under the Act, which is administered by the Office and the Board.⁸ Notwithstanding, the EEOC decision lends support to the Office's denial of compensation since there was no finding of harassment as alleged by appellant. The racial discrimination aspect of

² 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.606(b) (1999).

⁴ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁶ 20 C.F.R. § 10.608(b).

⁷ *Abe Scott*, Docket No. 92-1444 (issued May 6, 2000).

⁸ *George A. Johnson*, 43 ECAB 712 (1992).

the EEOC complaint was also dismissed for procedural reasons. Consequently, the EEOC decision is insufficient to warrant a merit review.

The “Prevention Of Workplace Harassment” mission statement of the employing establishment dated September 22, 1999 was considered by the Office on reconsideration but was properly deemed to be of no relevance to the issue of the case. The mission statement does not establish that appellant alleged a compensable factor of employment.

The remaining evidence of reconsideration consists of letters and statements from appellant and Mr. Erickson, Dean Steinbeck, Laura Chandler, Rodney Kiscadden, Carolyn McGuigan Barbara Yeich, and an October 19, 1999 report from Sergeant Burkolitz. This evidence is duplicative⁹ and was considered by the Office in its prior decision.

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by the Office. The evidence on reconsideration is either not relevant or duplicative. Because appellant has not satisfied one of the three requirements of section 8123, the Office properly denied his request for reconsideration.

The decision of the Office of Workers’ Compensation Programs dated June 26, 2002 is hereby affirmed.

Dated, Washington, DC
February 11, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁹ *Eugene F. Butler, supra* note 4.