

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ETHEL M. WRIGHT and DEPARTMENT OF THE AIR FORCE,
AIR TRAINING COMMAND, LUKE AIR FORCE BASE, AZ

*Docket No. 02-1848; Submitted on the Record;
Issued January 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On January 20, 2000 appellant, then a 48-year-old office automation assistant, filed an occupational disease claim alleging that factors of employment including harassment by her supervisor, Linda Ricketts, caused depression, stress and anxiety attacks. She had stopped work on November 23, 1999. In support of her claim, appellant submitted personal statements and medical evidence. The employing establishment also submitted statements from three of appellant's supervisors. By decision dated May 10, 2000, the Office denied the claim, finding that appellant failed to establish that her condition occurred while in the performance of duty. On May 19, 2000 appellant requested a hearing that was held on October 24, 2000. In a decision dated January 11, 2001 and finalized January 12, 2001, an Office hearing representative affirmed the prior decision.

By letter dated June 15, 2001, appellant, through her representative, requested reconsideration, and submitted additional evidence.¹ By decision dated September 18, 2001, the Office denied appellant's reconsideration request, finding appellant's arguments and evidence irrelevant and repetitious in nature. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The only decision before the Board in this appeal is the decision of the Office dated September 18, 2001 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated January 11, 2001 and

¹ The reconsideration request and supportive evidence was stamped received by the Office on June 26, 2001.

finalized January 12, 2001 and the filing of appellant's appeal on June 25, 2002, the Board lacks jurisdiction to review the merits of her claim.²

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).³ This section provides that 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.⁴ 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 on the merits.⁵

In the June 15, 2001 reconsideration request, appellant's representative contended that the Office hearing representative committed error by failing to recognize that appellant was given work outside the scope of her employment duties and in not recognizing that it was error on the part of the employing establishment to not provide appellant appropriate feedback. The representative further argued that error was demonstrated because, during a grievance process, an inappropriate document was placed in appellant's personnel folder, and that the hearing representative erred in not finding abuse when appellant's supervisor was not required to participate in alternative dispute resolution. Appellant's representative also contended that the hearing representative erred in not taking notice of the testimony of appellant's union representative that he had informed the employing establishment that appellant was under medical treatment for stress caused by an adverse work environment and that the employing establishment refused to recognize the problem and address the concern. He reiterated appellant's problems with her immediate supervisor, Ms. Ricketts, and the evidence in support thereof.

With her reconsideration request, appellant submitted a photocopy of a note she had written dated August 19, 1999, a two-page memorandum for record from Ms. Ricketts dated November 5, 1998, a February 27, 1997 memorandum for distribution signed by General Carrol H. Chandler, a copy of the United Nations brochure, "Universal Declaration of Human Rights," copies of documents entitled "Article III Rights of Parties," "Article XXIV Performance Management," "Article XXV Alternative Dispute Resolution," and medical evidence.

Regarding appellant's arguments that the hearing representative committed error, the Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of

² 20 C.F.R. § 501.3(d)(2).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ 20 C.F.R. § 10.608(b)(1) and (2) (1999).

⁵ 20 C.F.R. § 10.608(b) (1999).

judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁶ In the instant case, the Office hearing representative fully discussed appellant's difficult relationship with Ms. Ricketts, including the evidence presented by appellant, and by the employing establishment, and appellant's testimony and that of her union representative at the hearing. The hearing representative also fully discussed the exhibits submitted by appellant at the hearing and post hearing. The hearing representative fully analyzed the arguments and evidence presented, including that an inappropriate document had been placed in appellant's personnel folder, and found no evidence of error or abuse on the part of the employing establishment or that appellant was harassed by Ms. Ricketts. The hearing representative affirmed the prior decision that appellant failed to establish that she sustained an emotional condition in the performance of duty. The Board thus finds that appellant failed to establish that the Office erroneously applied or interpreted a specific point of law.⁷

Likewise, regarding the evidence presented with appellant's reconsideration request, the Board finds that it is insufficient to warrant merit review. The Board has long held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.⁸ The remaining evidence submitted by appellant was either previously of record or is irrelevant to the merit issue in the instant case, *i.e.*, whether appellant established that she sustained an employment injury in the performance of duty. As appellant submitted no new relevant evidence or argument in support of her request for reconsideration, the Board finds that the Office properly denied merit review of her claim.⁹

⁶ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ 20 C.F.R. § 10.608(b)(2) (1999).

⁸ See generally *Dominic E. Coppo*, 44 ECAB 484 (1993).

⁹ *Sherry A. Hunt*, 49 ECAB 467 (1998).

The decision of the Office of Workers' Compensation Programs dated September 18, 2001 is hereby affirmed.

Dated, Washington, DC
January 16, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member