

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA L. NOWAK and U.S. POSTAL SERVICE,  
POST OFFICE, Warren, MI

*Docket No. 01-141; Submitted on the Record;  
Issued June 2, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's August 8, 1999 request for reconsideration.

On December 19, 1991 appellant, then a 46-year-old letter carrier, filed an occupational disease claim for an emotional condition causally related to her federal employment. The Office accepted this claim<sup>1</sup> for an episode of adjustment disorder with mixed emotional features and depressive disorder based on factors of employment arising between 1988 and 1992, including an increase in route volume. Appellant received intermittent compensation for disability. She sustained suffered time lost due to this injury in February 1992.

On November 4, 1993 appellant filed a claim asserting that she sustained a recurrence of disability on November 1, 1993 causally related to her December 19, 1991 employment injury. The statements on her claim form, however, as well as the narrative information she submitted, showed that she was basing this claim on new work events that took place after April 21, 1992. The Office, therefore, handled the claim as a new occupational disease claim.<sup>2</sup> Appellant asserted harassment and verbal threats from a coworker, ongoing harassment from coworkers about being on light duty and obstruction from her employer with regard to workers' compensation.

In a decision dated August 4, 1994, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that her claimed emotional condition arose out of the course of her federal employment. The Office noted the factors of employment, to which

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<sup>1</sup> OWCP File No. A9-366523.

<sup>2</sup> OWCP File No. 09-0384474.

appellant attributed her claimed emotional condition<sup>3</sup> and made findings of fact based on the evidence. The Office found that four of the six implicated factors were outside the scope of coverage and were not compensable. The Office found that appellant was verbally abused by a coworker on April 9, 1993, but the evidence did not indicate that appellant suffered any emotional condition as a result of the incident. One medical report indicated that appellant was not concerned with this incident or the coworker. As for the remaining factor of employment, the Office found that being ordered to perform duties in excess of the restrictions for her back condition would be compensable but was not substantiated by the evidence. Appellant provided no specific dates or descriptions of the incidents, so her contentions could not be evaluated.

On January 16, 1996 an Office hearing representative affirmed the denial of appellant's claim. The hearing representative found a compensable factor of employment, *i.e.*, the incident of verbal abuse by a coworker on April 9, 1993. The hearing representative found, however, that there was no evidence that appellant suffered any emotional condition as a result of this incident.

In a decision dated August 6, 1997, the Office reviewed the merits of appellant's case and denied modification of the January 16, 1996 decision. The Office found that, although statements from coworkers supported that appellant needed assistance performing her job duties, they did not establish the work factors that she believed caused her claimed emotional condition. As for information from a union steward that many coworkers do not like the limited- or light-duty workers, the Office explained that appellant's desire to work a different position was not compensable. Further, the Office found that medical evidence from appellant's physician was not based on an accurate history, as there was no evidence of physical abuse.

On August 27, 1998 the Office again reviewed the merits of appellant's claim and denied modification of its prior decision.

On August 8, 1999 appellant requested reconsideration and argued that she had established as compensable verbal abuse by a coworker on April 9, 1993. She argued that her supervisors also harassed her. They knowingly required her to exceed her physical limitations, which on several occasions caused further injury. They also instructed a coworker to do things on her mail route that made her job very difficult to do in a timely manner.

In support of her request, appellant submitted an October 2, 1998 statement from Edwardine Ross, a coworker, who recalled being instructed by three supervisors, whose identities she could not remember, to "make sure I really stuff" appellant's route. This appears to have occurred in 1990. Ms. Ross recalled another unspecified occasion that appellant was upset to find third class mail thrown in her case. After appellant said something to an unnamed supervisor and left the workroom floor for a few minutes, the supervisor instructed Ms. Ross to throw additional mail on appellant's route until she returned. Ms. Ross considered this harassment.

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<sup>3</sup> Appellant was dissatisfied with the shift she was assigned, disputes relating to her workers' compensation claim, alleged verbal abuse by a coworker on April 9, 1993 being denied overtime, disparate treatment and being ordered to perform duties in excess of the restrictions for her back condition.

Appellant also submitted a July 20, 1999 report from Dr. Jennilyn Wetzel, her family physician, who updated a list of appellant's physical conditions, with medications and prognosis for each. She noted that several of these conditions, especially diabetes, carpal tunnel syndrome and Raynaud's disease, would all be aggravated by extremes in temperatures, repetitive activities and stress: "Stress would make it very difficult to control her blood sugars and her blood pressure."

In a decision dated September 7, 1999, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted in support of her request was repetitive and immaterial and was insufficient to warrant a merit review of her claim.

An appeal to the Board must be filed no later than one year from the date of the Office's final decision.<sup>4</sup> Because appellant mailed her August 29, 2000 appeal more than one year after the Office's final decisions on August 4, 1994, January 16, 1996, August 6, 1997 and August 27, 1998, the Board has no jurisdiction to review those decisions. The Board does not have justification over the merits of appellant's November 4, 1993 claim for an emotional condition. The only decision before the Board is the Office's September 7, 1999 decision denying appellant's August 8, 1999 request for reconsideration.

The Board finds that the Office properly denied appellant's August 8, 1999 request for reconsideration.

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>5</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup>

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 these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the

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<sup>4</sup> 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

<sup>5</sup> 20 C.F.R. § 10.605 (1999).

<sup>6</sup> *Id.* § 10.606.

request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

Appellant's August 8, 1999 request for reconsideration fails to show that the Office erroneously applied or interpreted a specific point of law and it advances no relevant legal argument not previously considered by the Office. To support her request, appellant submitted a medical report and a witness statement. The medical report is irrelevant because it did not address the incident of verbal abuse on April 9, 1993 and has no relevance to establish any other compensable factor of employment. The witness statement is also irrelevant. Ms. Ross premised her statement by noting that it described actions in 1990, when she was directed to "stuff" appellant's route. The Office previously adjudicated this matter with appellant's 1991 emotional condition claim, finding that an increase in appellant's route was compensable and accepting appellant's claim for an emotional condition. While new, the statement of Ms. Ross has no bearing on appellant's subsequent occupational disease claim for an emotional condition or disability commencing on or after April 21, 1992. The Board finds that the evidence submitted to support appellant's request for reconsideration does not constitute relevant and pertinent new evidence not previously considered by the Office.

Because appellant's August 8, 1999 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her claim, the Office properly denied her request.

The September 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 2, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Id.* § 10.608.