

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY J. STRAUSS and DEPARTMENT OF THE ARMY,
FORT INDIANTOWN GAP, Annville, PA

*Docket No. 03-1526; Submitted on the Record;
Issued October 23, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128.

On July 16, 1996 appellant, then a 61-year-old supervisory nurse, filed an occupational disease claim alleging that she sustained stress-related conditions due to factors of her federal employment. She stopped work on June 21, 1996.

By decision dated July 7, 1997, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish an injury in the performance of duty. The Office found that appellant had not established any compensable factors of employment.

On July 18, 1997 appellant requested a hearing before an Office hearing representative, which was held on January 29, 1998. In a decision dated July 8, 1998, the hearing representative affirmed the Office's July 7, 1997 decision. The hearing representative noted that appellant attributed her condition to working with the doctor in charge of the clinic, Eileen Arnold. The hearing representative stated:

“[Appellant] asserts that Dr. Arnold was incompetent and abusive due to a substance (alcohol) abuse problem. [She] further contends that Dr. Arnold, upon learning of her allegations, took retaliatory actions against her, eventually leading to removal from her position.”

The hearing representative noted that the employing establishment suspended appellant on multiple occasions after she contended that Dr. Arnold had a substance abuse problem. The employing establishment investigated appellant's allegations following a grievance of her suspensions and found her charges that Dr. Arnold abused alcohol unsubstantiated. The

employing establishment ultimately removed appellant from her position. The hearing representative noted:

“[Appellant] grieved two of the suspensions, but [g]rievance [e]xaminers issued decisions finding that the [employing establishment’s] actions were justified. As part of a [s]ettlement [a]greement, the removal action was cancelled, [appellant] agreed to resign from federal service. In the [s]ettlement [a]greement, however, there is no finding that the removal action constituted an erroneous or abusive action on the part of the [employing establishment].”

The hearing representative consequently found that appellant had not established any compensable factors of employment.

In a letter dated June 25, 1999, appellant, through her representative, requested reconsideration. In support of her request for reconsideration, she submitted additional medical evidence, including a report from a social worker dated February 5, 1999 and a report from her attending physician dated January 15, 1999. Appellant’s representative argued that the hearing representative erred in considering the provisions of the settlement agreement in reaching her conclusions. The representative stated that all of the material regarding the removal of appellant, including witness statements and the settlement agreement should have been stricken from the record, as the Office “is strictly prohibited from using any evidence relating to [the] removal action to deny [c]laimant benefits.”

In a decision dated September 13, 1999, the Office denied modification of its prior merit decision. Appellant subsequently requested reconsideration on September 11, 2000. Her representative again reviewed the factual and medical evidence of record favorable to appellant and contended that she had established that she sustained stress due to a hostile work environment. Counsel further argued that the hearing representative “incorrectly and wrongfully considered and relied upon removal documents in denying her benefits which the settlement agreement signed by the parties strictly prohibited use of....”

In a merit decision dated October 17, 2000, the Office found that the evidence submitted was insufficient to warrant modification of its prior decision. The Office noted that it was not prohibited from considering the findings of other agencies in reaching its conclusions.

On October 10, 2001 appellant, through her representative, requested reconsideration. Her representative again contended that the Office erred in considering “evidence relating to [appellant’s] removal.” The representative summarized the evidence of record and argued that it established that appellant sustained work-related stress. In a decision dated October 23, 2001, the Office denied merit review of its prior decisions on the grounds that appellant did not raise a new and relevant legal argument or submit relevant new evidence.

The Board finds that the Office properly refused to reopen appellant’s case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128.

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.¹ 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 review of the merits of the claim.²

In this case, appellant did not submit any new evidence with her request for reconsideration. Her representative argued that the Office was prohibited from considering documents relating to the settlement agreement and appellant's removal from employment. The Board has held that the submission of evidence or argument that repeats or duplicates that already in the case record does not constitute a basis for reopening a case.³ The Office previously considered and rejected appellant's argument that it was prohibited from considering documents from the settlement agreement and thus, appellant has not submitted a legal premise not previously considered. Further, appellant's argument does not have a reasonable color of validity as the Board has held that the findings of other government agencies, while not dispositive with regard to questions arising under the Federal Employees' Compensation Act, may be given weight by the Office and the Board.⁴

Appellant's representative summarized the evidence favorable to appellant and contended that she had established an emotional condition in the performance of duty. However, the Office previously considered appellant's interpretation of the evidence in her prior requests for reconsideration and, therefore, it is insufficient to warrant reopening of her claim for merit review.⁵

¹ 20 C.F.R. § 10.606(b)(2).

² 20 C.F.R. § 10.608(b).

³ *Edward W. Malaniak*, 51 ECAB 279 (2000).

⁴ *Ernest J. Malagrida*, 51 ECAB 287 (2000).

⁵ *Pamela I. Holmes*, 49 ECAB 581 (1998).

The decision of the Office of Workers' Compensation Programs dated October 23, 2001 is affirmed.

Dated, Washington, DC
October 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member