

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONYA D. BIECHE and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Seattle, WA

*Docket No. 03-1369; Submitted on the Record;
Issued September 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On November 17, 2000 appellant, then a 31-year-old maintenance mechanic, filed a traumatic injury claim alleging that she was harassed by management on November 13, 2000 which caused an employment-related stress condition. Appellant explained that she was attempting to go to work on November 13, 2000 but was denied the opportunity and was removed from the premises by the Postal Service Police.¹ Appellant received an initial diagnosis of anxiety and she stopped work on November 17, 2000.

In a March 27, 2001 decision, the Office denied appellant's claim on the grounds that she failed to establish that her claimed emotional condition was due to factors of her federal employment. The Office found that the employing establishment's removal of appellant from the premises as the result of her failure to follow work instructions was an administrative function, which in the absence of evidence of error or abuse, was not a compensable factor of employment. Additionally, the Office found that the initial reports from the employing establishment and Postal Service Police indicated that appellant was escorted off the employing establishment premises without physical harm or verbal abuse.

Appellant requested an oral hearing, which was held on November 19, 2001. By decision dated February 8, 2002, the Office hearing representative affirmed the prior decision. The hearing representative found that appellant failed to provide any evidence to establish that she was harassed or that management erred or was abusive in contacting the Postal Service Police on November 13, 2000.

¹ The record reflects that appellant has previously accepted claims for strain, left second finger (A14-352912) and adjustment reaction (A14-353972), both arising on May 19, 2000.

On January 31, 2003 appellant requested reconsideration. She stated that the Office hearing representative appeared to be confused about her testimony regarding the November 13, 2000 incident. In her request, appellant essentially reiterated her account of what transpired on November 13, 2000. By decision dated February 13, 2003, the Office denied appellant's January 31, 2003 request for reconsideration.

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.² The instant appeal was dated and postmarked May 9, 2003. As such, the Board does not have jurisdiction over the Office hearing representative's February 8, 2002 merit decision. The only decision that the Board may review is the Office's February 13, 2003 decision denying appellant's January 31, 2003 request for reconsideration.

The Board finds that the Office properly denied appellant's January 31, 2003 request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (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 Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

Appellant's January 31, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. In her January 31, 2003 request for reconsideration, appellant stated that the Office hearing representative was confused about the testimony she provided at the hearing concerning the paging incident. Appellant stated that she was not aware of her supervisor's numerous calls to her. She stated that she was at lunch while the supervisor was calling her and was not in the accepted practice of having her radio on during her lunch break. Appellant stated that when she heard the public announcement call, she was in the middle of working and a fellow mechanic, Ed Cruz, told her that the supervisor had been trying to contact her and had loaned her his radio. Appellant related that when she contacted the supervisor, he told her to call him on the telephone and she had advised him that she did not have a telephone and did not know the telephone number. Appellant further stated that she got her own radio and then proceeded to the supervisor's office to see why he wanted her to call him. Appellant argued that she could not have failed to follow her supervisor's orders as she did not have a telephone and did not know

² 20 C.F.R. § 501.3(d)(1), (d)(2); *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999).

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

the telephone number. Appellant essentially contended that she tried to find out what her supervisor had wanted by going directly to his office. She asserted that she did nothing wrong.

On reconsideration, appellant essentially reiterated her version of the events that transpired on November 13, 2000. Her statement that the Office hearing representative appeared to be confused about her testimony and appellant's general disagreement with the outcome of her claim does not demonstrate that the Office erroneously applied or interpreted a specific point of law. Appellant clearly 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 third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any additional evidence with her January 31, 2003 request for reconsideration. Accordingly, appellant 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 is not entitled to a review of the merits of her claim, pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's January 31, 2003 request for reconsideration.

The February 13, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member