

**United States Department of Labor
Employees' Compensation Appeals Board**

DELORES K. LEEDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer**

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**Docket No. 04-485
Issued: April 23, 2004**

Appearances:

*Delores K. Leeds, pro se
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 13, 2003. Because more than one year has elapsed between the last merit decision dated November 20, 2002 and the filing of this appeal on December 15, 2003 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 9, 2002 appellant, then a 49-year-old personnel clerk, filed an occupational claim alleging that she had severe stress from her job causing anxiety, panic attacks and headaches. She indicated that her condition began on May 15, 2002 although she did not

indicate the date she became aware the condition was work related. Appellant stopped working on June 7, 2002.

Appellant contended that her stress began after carpal tunnel surgery. One of her contentions was that it was stressful for her when she had to work for Dr. Ostergard because he wanted her to help get rid of a nurse, Ivy, and Ivy and another nurse told appellant they wanted to get the doctor fired because they were all unable to work together. Another contention was that she was not included in staff meetings and temporary employees were given excessive duties and told her what to do even though she was a career employee and they were not.

Further, appellant contended that she received a letter telling her she must leave exactly at 3:00 p.m. and she finally got a letter of warning for staying after 3:00 p.m., even though, when she first worked at the employing establishment she was allowed to stay a little after 3:00 p.m. Appellant stated that she repeatedly asked her manager, Corrine Loprinzi, for another job because her job as receptionist strained her neck, but her requests were denied. She contended that Ms. Loprinzi asked her to waive her restrictions and begin working an eight-hour day, rather than a six-hour day and perform repetitive work.

Appellant contended that her supervisor, Judy Middleton, subjected her to verbal harassment and was constantly telling her to answer the other telephone and wait on a customer. She said Ms. Middleton told her not to eat at her desk, "that's what breaks are for." Appellant contended that she was threatened with disciplinary action regarding her absenteeism due to work-related issues. She stated that, when she called in sick, she was required to provide a Family Medical Leave Act (FMLA) document or be subject to disciplinary action, but when she submitted these documents she was told they were insufficient. Appellant stated that in general the work atmosphere was hostile, nonsupportive and highly dysfunctional.

By letter dated June 18, 2002, Ms. Loprinzi stated that appellant's allegations of harassment were unfounded and noted, *inter alia*, that appellant claimed absences due to a work-related neck condition but did not submit supporting documentation. She stated that appellant accepted a modified-duty assignment on October 24, 1995 but was never asked to work beyond her limitations. Ms. Loprinzi stated that, when appellant asked her to help her obtain a new job, she told her that unless her request was medically necessary, reassignment was not feasible because her present assignment was created specifically for her and was within her medical restrictions. Appellant stated that Ms. Loprinzi told her not "to step over the line" and had asked her numerous times when she was going to retire.

In a report dated August 9, 2002, Ms. Middleton refuted appellant's contentions, stating that, since appellant was the only receptionist at the desk, she told her that she needed to remain at her desk. Ms. Middleton stated that if appellant was away from the front desk and the telephone was ringing she (Ms. Middleton) would answer the telephone. She stated that she issued a letter of warning to appellant because she was clocking in late and subsequently clocking out late and it required adjustments by the timekeepers. After many discussions, Ms. Middleton told appellant that, if she clocked in late again, she would issue her a letter of warning. After the letter of warning was issued, appellant filed a grievance and she and Ms. Middleton met with the union representative and the letter was subsequently pulled from the file when appellant went four months without a clocking problem. Ms. Middleton denied telling

appellant that she could not eat at her desk, but told her that she must be discreet, since as a receptionist she greeted customers and it was not appropriate for her to eat her lunch at her desk.

By decision dated November 20, 2002, the Office denied appellant's claim, stating that the evidence of record was insufficient to establish that she sustained an emotional injury arising from her employment. The Office found that she did not establish any compensable factors of employment.

By letter dated October 29, 2003, appellant requested reconsideration of the Office's decision. She stated that there were numerous documents in the record stating that her neck and stress was aggravated at work. Appellant stated that her most recent physician, "Dr. Karlan," documented that work aggravated her neck and stress. She, however, did not submit any documents to support her request for reconsideration.

In a decision dated November 13, 2003, the Office denied appellant's request for reconsideration on the grounds that it was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act, the Office's regulation provide that the application for reconsideration, including all supporting documents, 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.¹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).²

To establish that she has sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.³

ANALYSIS

In this case, in her request for reconsideration, appellant stated that she had medical documentation including a report from her current treating physician showing that her employment aggravated her stress. That documentation is not in the record. Even so, before the

¹ Section 10.606(b)(2)(i-iii).

² Section 10.608(a).

³ See *Robert W. Johns*, 51 ECAB 137, 14 (1999).

medical evidence could be addressed, appellant would need to show that she sustained a compensable factor of employment. She did not submit any evidence related to that issue. Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or present relevant and pertinent new evidence not previously considered by the Office, she did not meet any of the standards of section 10.606(b)(2). The Office, therefore, properly refused to reopen the claim for merit review.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) on the grounds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, and she did not advance a relevant legal argument or present relevant and pertinent new evidence not previously considered by the Office.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member