

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

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**DENISE C. HAMPTON-GRAY, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Irvine, CA, Employer**

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**Docket No. 04-563  
Issued: August 13, 2004**

*Appearances:*  
*Denise C. Hampton-Gray, 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  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On December 23, 2003 appellant filed a timely appeal from the October 7, 2003 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's October 7, 2003 decision.

**ISSUE**

The issue is whether the Office properly denied reconsideration of appellant's claim for a review on the merits.

**FACTUAL HISTORY**

On the prior appeal of this case,<sup>1</sup> the Board found that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. In a July 29, 2002 decision, the Board found that the weight of the evidence failed to substantiate

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<sup>1</sup> Docket No. 00-1105 (issued July 29, 2002).

appellant's perception of harassment or abuse or unreasonable conduct. The Board determined, however, that one compensable factor of employment was established: that her treating physician cleared her to return to work for four hours a day on May 18, 1998 but the employing establishment offered her a job for eight hours a day, which was unsuitable to her physical restrictions. Appellant eventually returned to work on June 11, 1998, and the employing establishment agreed to charge to administrative leave the 68 hours of annual and sick leave she used between May 18 and June 10, 1998. Having established a compensable factor of employment, the issue became a medical one, namely, whether this administrative error caused or contributed to appellant's diagnosed major depression or post-traumatic stress disorder. The Board found that the opinion of appellant's attending clinical psychologist, Dr. Philip M. Carman, was of diminished probative value on the issue of causal relationship because he based his opinion on perceptions that were not accepted as factual and on factors that were not accepted as established in this claim. The Board affirmed, as modified, the Office's October 22, 1999 decision denying appellant's claim for compensation.

On July 21, 2003 appellant requested reconsideration before the Office. She argued that there was relevant credible evidence that she was subjected to specific incidents of harassment and criticism in the presence of other managers, coworkers and the union steward. She attached 12 exhibits relating to her attempts to get a copy of her case file.

On August 20, 2003 appellant submitted 123 pages of documents, circling and highlighting pertinent evidence that she contended the Board overlooked. On August 29, 2003 she argued that Dr. Carman had submitted many reports and notices from 1997 to 1999 reporting the incidents that she cited as having exacerbated her condition. She took issue with the Board's finding on the compensable factors in her claim, and she readdressed the incident that took place on November 20, 1997. She also argued that Dr. Carman had discussed the compensable factor of employment found by the Board and reported on January 25, 1999 that this factor contributed to her condition. Appellant concluded that the medical evidence was sufficient to establish her emotional condition as compensable. She also stated that she was submitting new evidence: a July 15, 2000 statement from a former coworker.

In a decision dated October 7, 2003, the Office denied reconsideration of appellant's case for a review on the merits. The Office found that appellant's request for reconsideration did not warrant a merit review of its October 1999 decision denying her claim for compensation.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>2</sup> 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>3</sup>

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.605 (1999).

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>4</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence 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 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>5</sup>

### ANALYSIS

The Board finds that appellant's July 21, 2003 request for reconsideration, and subsequent submissions, fails to meet any of the standards for obtaining a merit review of her case. Appellant's request does not show that the Office erroneously applied or interpreted a specific point of law. It did not advance a relevant legal argument not previously considered by the Office, and it contained no evidence that constituted relevant and pertinent new evidence not previously considered by the Office.

The Board has carefully reviewed the evidence the Office received since May 17, 2000 and finds that the July 15, 2000 statement from a former coworker is new, but its relevancy is not established. The author wrote that in early July 1998 her supervisor warned the nixie clerks that appellant was coming into their section and that she was "trouble" and would write grievances. Even if the truth of the matter asserted could be accepted from this hearsay evidence, appellant was not shown to be present when the comment was made.<sup>6</sup> There is no indication that this comment constituted error or abuse by the supervisor. The evidence, therefore, has no tendency to establish a compensable factor of employment. It is not relevant. The remainder of appellant's submissions, with circles and highlights, is repetitious of the evidence previously submitted and considered.

Appellant's argument concerning the probative value of Dr. Carman's opinion was previously considered by the Office and reviewed by the Board. As the Board found, his opinion on the issue of causal relationship was of diminished probative value because he based his opinion on allegations that were not accepted as factual and on factors that did not fall within the scope of workers' compensation. Although he noted in his January 25, 1999 report that he had released appellant to return to work on a four-hour-a-day basis on May 18, 1998 and that she was

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<sup>4</sup> *Id.* at § 10.606.

<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> See *Gracie A. Richardson*, 42 ECAB 850 (1991) (an emotional reaction to workplace gossip is not compensable).

not permitted to return to work until June 11, 1998,<sup>7</sup> he did not discuss from a psychological perspective how this specific incident caused or contributed to her diagnosed condition. Instead, he addressed a broad array of other factors that were not established as factual and that are not compensable in any event. The Board finds that the additional reports of Dr. Carman are repetitious of his prior reports. The submission of evidence that repeats or duplicates that already of record does not constitute a basis for reopening a claim.<sup>8</sup>

Because appellant's July 21, 2003 request for reconsideration does not meet at least one of the standards for obtaining a merit review of her case, the Board will affirm the Office's October 7, 2003 decision denying her request.<sup>9</sup>

### **CONCLUSION**

The Board finds that the Office properly denied a reopening of appellant's case for a review on the merits.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 7, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> At no point did the Board state that Dr. Carmen failed to cite this incident in his reports.

<sup>8</sup> See *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>9</sup> On appeal appellant submitted a December 30, 2003 report from Dr. Carman. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, has no jurisdiction to review this new evidence or any evidence submitted after the Office's October 7, 2003 decision.