

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

CARLA NEVIL, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Orleans, LA, Employer)

**Docket No. 05-1486
Issued: November 1, 2005**

Appearances:
Carla Nevil, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 1, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated April 1, 2005, denying her request for further merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The most recent merit decision of the Office pertaining to the underlying issue was the Office's January 26, 2004 decision which denied appellant's claim for an emotional condition. Because more than one year has elapsed between the last merit decision of the Office and the filing of this appeal on July 1, 2005, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

FACTUAL HISTORY

On August 21, 2001 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim alleging that she sustained an emotional condition in the performance of duty. She alleged that on August 15, 2001 she submitted a change of schedule and that, unlike in the past, her request was denied by Paulette Jasper, the station manager. Appellant alleged that Ms. Jasper held a conference with witnesses to inform her that her request was denied. She alleged that she was then sent home early, after working for three hours and indicated that she became very upset. Appellant alleged that, later that evening, she became more upset, angry, stressed out and overwhelmed after she realized that Ms. Jasper had treated her as if she were a threat who had to be informed with witnesses.¹ She alleged that she could not function and that she could not focus or take care of her family and that she just wanted to sleep to escape.² The employing establishment controverted the claim.³

In a statement dated September 29, 2001, appellant described conditions that she believed caused her emotional condition. She stated that she became unhappy with her work hours. Appellant stated that her letter carrier position went well until she was bitten by a dog which added to her fear of dogs. She added that Denise Trapagnier, a coworker and other coworkers made harassing remarks toward her such as barking at her, calling her a malingerer, insinuating that she was bankrupt, and indicating that she was untruthful. Appellant also alleged that she was denied sick leave; that she was denied light duty; that she was sent for a fitness-for-duty examination; that her supervisors refused to recognize her claim; that her check was incorrect on several occasions; that Cynthia Staes, an employing establishment human resources specialist, had a bad attitude toward her; and that the employing establishment did not accurately or properly process office forms. She also listed those individuals whom she believed were responsible for her condition and provided a witness list.

In a statement dated October 5, 2001, Ms. Jasper, indicated that appellant had not performed her full-time letter carrier duties since March 16, 1998 when she had been accommodated with light-duty work within restrictions. She explained that on August 17, 2001 she met with appellant, a union steward named Ms. Jenkins, and an acting supervisor named Mr. Dubre, regarding appellant's request for a schedule change. She indicated that there was no work available for the remainder of the day within appellant's restrictions such that she could not approve appellant's request. Regarding the presence of union officials during the meeting, Ms. Jasper advised that administrative guidelines required that a steward be present during conferences with employees.

¹ In a separate statement, appellant explained that, because she was sent home early and because of the uncommon way that she was informed of her leave denial, she became stressed.

² Appellant alleged that she had originally reported the claim on August 18, 2001, however, her supervisor refused to take the report.

³ The record reflects that appellant has several prior claims. They include a March 7, 1997 injury under File No. 160294562, a March 16, 1998 injury under File No. 160312507, a May 20, 2000 injury under File No. 160353733, a November 29, 2000 injury under File No. 160214529, and an August 14, 2001 injury under File No. 16024424.

Appellant provided numerous documents which included copies of emails and information related to her prior claims, letters, duty status reports, social worker reports, pre-employment physicals, light-duty cards, limited- and modified-duty assignments, denial of light duty, records of telephone conversations emails, a deposition, fitness-for-duty examinations; and CA-17 forms.

In a February 19, 2002 letter, appellant alleged that her agency refused to allow her to return to work on December 3, 2001 despite being released to work. She alleged that the employing establishment harassed her over her stress claim. Appellant alleged that her stress claim was a result of harassment and abuse since her dog bite injury of March 16, 1998.

By decision dated February 28, 2002, the Office denied appellant's claim. The Office found that there were no compensable factors of employment. The Office advised appellant that the evidence failed to establish that a claimed condition arose in the performance of duty.

By letter dated March 6, 2002, appellant requested a hearing which was held on September 25, 2002. She also alleged that her claim was an occupational injury as well as traumatic injury. The Office hearing representative confirmed with appellant those incidents which she believed contributed to her condition. They included filing for bankruptcy in 1998, denial of light duty for her foot condition of November 6, 2000, the denial of her request for a change in schedule, the filing of a grievance in an employing establishment complaint, and the handling of a prior compensation claim. Additionally, appellant indicated that Ms. Jasper accused appellant of intentionally hurting herself, that she was cursed by Ms. Trapagnier, that coworkers made insulting comments to her, that her paycheck was intentionally changed and that Ms. Staes harassed her.

By letter dated October 30, 2002, the employing establishment provided comments with respect to the transcript of hearing and continued to controvert the claim. By letter dated November 21, 2002, appellant responded to the employing establishment's comments and generally disputed the employing establishment's assertions.

By decision dated December 12, 2002, the Office hearing representative found that appellant had not established any compensable factors of employment and affirmed the February 12, 2002 decision.

The Office subsequently received an undated Equal Employment Opportunity settlement agreement wherein appellant and the employing establishment parties agreed to improve communication.

On March 6, 2003 the Employees' Compensation Appeals Board received an appeal dated February 5, 2003 from appellant. After appellant requested withdrawal of the appeal, the Board, on June 6, 2003, issued an order dismissing appeal.⁴

⁴ Docket No. 03-973 (issued June 6, 2003).

By letter dated December 2, 2003, appellant requested reconsideration. Appellant repeated her previous arguments and she submitted evidence. The employing establishment denied appellant's allegations of impropriety.

By decision dated January 26, 2004, the Office denied modification of the December 12, 2002 decision. The Office noted that appellant had not identified a compensable factor of employment to establish an emotional condition in the performance of duty.

Subsequent to the decision, the Office received copies of previously received statements from Ms. Staes and Kevin Phillips. The Office also received several statements from the employing establishment, which included an October 30, 2002 email response in which Ms. Trepagnier denied treating or speaking to appellant inappropriately.

In an April 19, 2004 report, Dr. Padmini Nagaraj, Board-certified in internal medicine, advised that appellant was treated for depression and stress since her initial evaluation on March 7, 2001. She indicated that appellant related continued sadness and anxiety related to her job.

By letter dated January 26, 2005, appellant requested reconsideration. She essentially reiterated her previous arguments and submitted medical evidence. Her allegations included that when she requested a change of schedule, she was treated differently from her coworkers, and a witness was required. Appellant repeated that her job was going well until she was bitten by a dog. She noted that, when she was placed on restrictions, her fear of dogs increased. Appellant alleged that she was sent home early on several occasions, and that her coworkers made harassing remarks and comments towards her. She also referred to her earlier statements and medical evidence in the record. Appellant repeated that her claim continued to cause her to be stressed and it was especially stressful to receive the denial letters.

By decision dated April 1, 2005, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,⁵ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

⁵ 5 U.S.C. § 8128(a).

“(ii) Advances a relevant legal argument not previously considered by the Office;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered
by the [the Office].”⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁷

ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on January 26, 2005. The underlying issue on reconsideration was whether appellant established a compensable factor of employment with regard to her claim that she sustained an emotional condition in the performance of duty. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she sustained an emotional condition in the performance of duty.

In her January 26, 2005 request for reconsideration, appellant essentially reiterated her previous arguments. As noted above, this involved allegations that her request for a change of schedule was handled inappropriately. This also included her assertion problems began when she was bitten by a dog on her route and placed on restricted duty and that her coworkers made comments and remarks that were stressful to her. She also referred to her early statements and medical evidence in the record and indicated that it was stressful to receive denial letters. The Board notes that appellant merely reiterated her previous contentions regarding her postmaster’s actions which she believed were stressful. Appellant also submitted documents that were previously of record.

The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁸ Appellant did not provide any relevant and pertinent new evidence to establish that she sustained an emotional condition in the performance of duty.

She also submitted an April 19, 2004 report in which Dr. Nagaraj advised that appellant was treated for depression and stress since her initial evaluation on March 7, 2001 and advised that appellant continued to relate sadness and anxiety to her job. However; this report is not relevant as appellant has not established a compensable factor of employment. Because of this, it is premature to consider medical evidence addressing causal relationship.⁹ The Board notes that

⁶ 20 C.F.R. § 10.606(b).

⁷ 20 C.F.R. § 10.608(b).

⁸ *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

⁹ *See Peter D. Butt Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

no employment factors have been accepted as causing stress or anxiety. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that the Office of Workers' Compensation Program properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 1, 2005 is affirmed.

Issued: November 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Robert P. Mitchell*, 52 ECAB116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).