United States Department of Labor
Employees' Compensation Appeals Board

ROSEMARY B. WAY, Appellant	)	
and	)	**Docket No. 05-1673**
	)	**Issued: November 9, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Bonita Springs, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2005 appellant filed a timely appeal from a June 1, 2005 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Because more than one year has elapsed between the last merit decision dated May 20, 2004 and the filing of this appeal on August 1, 2005, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the June 1, 2005 nonmerit decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim on June 1, 2005.

FACTUAL HISTORY

On December 30, 2002 appellant, then a 54-year-old mail carrier, filed an occupational injury claim alleging that she experienced depression, nervousness, anxiety and gastritis as a result of harassment and discrimination on the part of her supervisor. Appellant accused her

supervisor of adversely affecting her route evaluation in order to prevent her from becoming a regular career carrier. Appellant submitted disability slips dated December 10 and 26, 2002 from Dr. Jacqueline Romero, a treating physician and a report of an employment physical dated March 9, 1989 and signed by Dr. M.A. Rorro, a treating physician.

In a January 2, 2003 report, supervisor David Caputo stated that appellant received notice of termination for "improper conduct" on November 4, 2002; was terminated on December 27, 2002; and first reported her alleged condition to him on December 30 or 31, 2002. Mr. Caputo contended that appellant's claim had no merit. The employing establishment controverted appellant's claim, contending that it had been filed solely as a result of her termination. The employing establishment stated that, on October 25, 2002, appellant had been issued a letter of warning and was later removed for attempting to inflate her route elevation (providing false information on the number of deliveries on her route) in hopes of becoming a regular career employee.

In a narrative statement received by on January 9, 2003, appellant claimed that, after experiencing a "nervous breakdown" on December 3, 2002, she visited the emergency room at Cleveland Clinic and was treated by Geraldine Megee, a psychologist and Dr. Romero. She alleged that on November 26, 2002 Mr. Caputo gave her a termination letter dated November 4, 2002. She alleged that Mr. Caputo had harassed her everyday for two weeks beginning September 10, 2002, accusing her of lying and cheating on the edit books; refused to loan her a vehicle when her vehicle "broke down" on route; informed her that she could not return to work without a doctor's note when she complained she was "stressed out;" and denied assistance in delivering her mail when she returned to work after taking leave.

Appellant submitted numerous personnel documents, including requests for notification of absence; a December 29, 2002 notice of removal effective December 27, 2002 for improper conduct; and a December 31, 2002 statement signed by Mr. Caputo indicating that appellant was issued an amended letter of termination effective December 27, 2002 and that the work environment was not hostile. In a January 2, 2003 statement, James Kurtyka related that appellant had been issued a termination letter dated November 4, 2002; that on December 26, 2002 her supervisor had received medical documentation that she was being treated for a virus and told appellant to come in for a Form CA-2 claim; and that appellant did come in to pick up a CA-2 form claim on December 30, 2002.

By letter dated January 16, 2003, the Office asked the employing establishment to respond to appellant's claims and to clarify whether appellant had been denied a replacement vehicle when her vehicle broke down; whether an employee must be cleared by a physician when she is "stressed out;" and whether there had been an excess of mail when appellant returned to work after taking leave.

By letter dated January 6, 2003, the Office advised appellant that the information submitted was insufficient to establish her claim and requested additional information detailing her prior emotional condition and a medical report from a physician providing a diagnosis and an opinion as to the cause of her condition.

In a response dated January 16, 2003, Mr. Caputo stated that it was not the policy of the employing establishment for carriers to borrow vehicles if their own broke down; that it was the employing establishment's policy to require a physician's note if an employee indicated that she was "stressed out;" and that appellant had been assigned to an auxiliary route and had been afforded the time she needed to clear her route.

By letter dated February 13, 2003, appellant alleged that Mike Varda, union steward, was a witness to the fact that she received a termination letter dated November 4, 2002 on November 26, 2002 and that her supervisors had been hostile for months.

By letter dated February 10, 2003, Mr. Varda stated that the November 4, 2002 letter of removal was given to appellant on November 26, 2002; that an amended letter dated December 26, 2002 was issued on December 9, 2002; that the letter was going through the grievance process; and that appellant had received no assistance with her route after she returned from leave.

Appellant submitted a December 4, 2002 attending physician's report bearing an illegible signature, which provided a diagnosis of depression/upper respiratory infection due to recent job termination. A December 4, 2003 certificate of health care provider bearing an illegible signature reflected "patient under stress being treated for severe anxiety/depression." In a February 28, 2003 attending physician's report, Dr. Romero provided a diagnosis of "stress disorder and anxiety/depression/patient undergoing stressful situation at work." Appellant also submitted numerous time analysis forms.

By letter dated March 10, 2003, Mr. Caputo stated that there had not been excessive mail left to be "worked" after appellant's leave of absence; that appellant's request for assistance had been denied because there was not a high volume of mail when she returned; and that appellant had a rural route under an evaluation system and would have been paid overtime for any work necessary to clean up her route.

In a medical report dated April 2, 2003, Dr. Christopher Healey, a treating physician, opined that appellant was extremely fearful of "being stalked by her boss and dying" and that she suffered from anxiety, panic and migraines. In a letter dated April 9, 2003, Dr. Healey reported that he had been treating appellant since March 20, 2003 for stress-related psychiatric symptoms, including major depression with psychotic features and panic disorder. He stated that her condition rendered her unable to work for the predictable future.

By decision dated April 21, 2003, the Office denied appellant's claim, finding that the evidence failed to establish that she had been injured in the performance of duty. The Office determined that appellant's allegations were unsubstantiated or were administrative in nature and that there was no evidence of abuse or error.

In an undated letter received by the Office on October 22, 2003, appellant requested a review of the written record. By letter dated December 12, 2003, appellant requested an oral hearing.

By decision dated February 5, 2004, the Office denied appellant's request for an oral hearing as untimely.

By letter dated March 31, 2004, appellant requested reconsideration of the April 21, 2003 decision. On April 7, 2004 she submitted another request for reconsideration. Appellant submitted numerous documents pertaining to the grievance filed in relation to her termination. In a letter dated March 31, 2004, Dr. Healey opined that appellant's condition was a direct result of abusive treatment by the employing establishment and termination from the postal service. In a report dated April 14, 2004, Dr. Healey related appellant's allegations of harassment, discrimination and ridicule at work and stated that her symptoms had developed over several months since she was fired; that she had no symptoms, treatment or disability prior to the onset of "these harassing charges of the workplace;" and that she had been a faithful employee who developed a stress-related major depression with psychotic features due to her work situation.

In a decision dated May 20, 2004, the Office denied modification of the April 21, 2003 decision, finding that appellant had failed to establish that she had been injured in the performance of duty. The Office determined that the alleged disciplinary actions were administrative in nature; that there was no evidence of error or abuse; and that her uncorroborated allegations of harassment were not substantiated.

By letter dated May 13, 2005, appellant, through her representative, requested reconsideration of the May 20, 2004 decision, noting that an Equal Employment Opportunity Commission complaint had just been filed in federal court relating to the issues involved in this case. It was alleged that appellant was unable to assist counsel due to psychological and physical manifestations of the work-related injury. Appellant did not submit any additional evidence in support of her request.

By decision dated June 1, 2005, the Office denied appellant's request for reconsideration, finding that her request neither raised a substantial legal question nor included new and relevant evidence and therefore was insufficient to warrant a review of the prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,[1] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[2] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits. To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[3]

[1] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[2] 20 C.F.R. § 10.606(b)(1)-(2).

[3] *Id*. at § 10.607(a).

ANALYSIS

In a May 13, 2005 letter, appellant's representative requested reconsideration and an extension of time for 90 days. Although the representative offered several reasons why she believed appellant should be granted an extension of time, she did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.[4] In fact, she submitted no evidence in support of her request for reconsideration. Consequently, appellant is not entitled to a review of the merits of her claim.

Appellant's representative asked the Office to grant an extension of time to file a request for reconsideration. Section 10.607 of the Code of Federal Regulations provides that an application for reconsideration must be sent within one year of the date of the Office decision, for which review is sought in order to constitute a timely application.[5] The Act's implementing regulations delineate clear criteria for determining whether or not a timely request for reconsideration should be granted.[6] Neither the Act nor its implementing regulations provide for an extension of time to file an application for reconsideration.

The Board finds that the Office properly denied appellant's request for merit review.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review on June 1, 2005.

[4] 20 C.F.R. § 10.606(b).

[5] 20 C.F.R. § 10.607.

[6] *See* 20 C.F.R. § 10.606(b)(1)-(3); 20 C.F.R. § 10.608.

ORDER

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

Issued: November 9, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board