

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

JOANNE TEAL, Appellant)
and) Docket No. 06-302
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 14, 2006
Bloomington, IL, Employer)

)

Appearances:

Richard L. Steagall, Esq., 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 November 17, 2005 appellant, through her attorney, filed a timely appeal of a November 17, 2004 nonmerit decision of the Office of Workers' Compensation Programs, denying her request for reconsideration. Because more than one year has elapsed from the date of issuance of the Office's September 22, 2004 merit decision denying appellant's emotional condition claim to the date appellant filed her appeal, the Board lacks the 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 claim for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 29, 2003 appellant, then a 58-year-old automation distribution clerk, filed an occupational disease claim alleging that her major depression was caused by factors of her federal employment. In an accompanying statement, appellant provided a history of her

emotional condition and medical and psychological treatment. She was first diagnosed with depression on January 29, 1996. Appellant stated that she did not take any medication for her condition from 1998 through 2001 and had no symptoms of depression during this period. She contended that beginning in March 2001 she was harassed by her supervisor, Patricia Dittmer, after she reported an injury. Appellant contended that Ms. Dittmer failed to submit her leave forms to the proper personnel. She further attributed her emotional condition to receiving a letter of warning and being suspended in September 2001. Appellant was also suspended in November 2002 for doing something that other employees did without suspension. Her claim for a physical injury was denied in December 2001, and she was further harassed by Ms. Dittmer, who demanded that appellant submit paperwork regarding her request for leave under the Family Medical Leave Act and questioned her physical restrictions. Appellant alleged that on February 11, 19 and 20, 2002 Ms. Dittmer ordered her to leave the employing establishment because work was not available that fell within her restrictions. She also alleged that Ms. Dittmer falsely accused appellant of hitting her. Appellant was accused of failing to attend a disciplinary hearing and received a letter in April 2002 which advised that she had been fired. She indicated that an October 2002 arbitration decision found that she was unjustly removed from her employment and directed her to undergo two physical examinations before returning to work. Appellant also contended that she was verbally abused by her coworkers.

Appellant submitted treatment notes from physical therapists and a licensed practical nurse which covered the period July 18 to September 13, 2001. She also submitted a description of her position as an automation distribution clerk.

By letter dated March 31, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested additional factual and medical information. In a letter of the same date, the Office requested that the employing establishment respond to appellant's allegations and address whether her job was stressful and any accommodations made to reduce stress.

The employing establishment submitted statements from management personnel, including Ms. Dittmer, who addressed appellant's confrontations with coworkers and supervisors, her failure to take direction from her supervisors and her physical restrictions. The employing establishment denied appellant's allegation that she worked in a stressful environment.

The Office received treatment notes covering the period January 11, 2002 through August 20, 2004 which addressed appellant's emotional and physical conditions. The Office also received correspondence which addressed her leave requests, Social Security disability compensation and her return to work. Appellant submitted statements in which she reiterated her contention that her emotional condition was due to harassment at the employing establishment and a list of telephone calls she made from April 12, 2001 to February 21, 2002 requesting help to stop Ms. Dittmer from harassing her.

By decision dated September 22, 2004, the Office found that appellant failed to establish that her emotional condition arose from a compensable factor of her employment.

In a letter dated October 30, 2004, appellant requested an “appeal” before the Office. She stated that she was in the process of obtaining a new attorney to assist with her workers’ compensation claims and federal lawsuit because her prior attorney had been suspended from practicing law for one year. Appellant did not submit any evidence in support of her request.

By decision dated November 17, 2004, the Office denied appellant’s request for reconsideration because it neither raised substantive legal questions nor included pertinent new and relevant evidence and, thus, was insufficient to warrant a merit review.

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) constitute relevant and pertinent new evidence not previously considered by the Office.² 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 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.

ANALYSIS

In an October 30, 2004 letter, appellant requested reconsideration of the Office’s September 22, 2004 decision, which found that she did not sustain an emotional condition while in the performance of duty. Thus, the relevant underlying issue in this case is whether appellant sustained an emotional condition causally related to compensable factors of her federal employment.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Her request merely noted that she was in the process of obtaining her representation. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.⁴

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[t]he 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).

⁴ See *James E. Norris*, 52 ECAB 93 (2000).

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2006
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