

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, FL, Employer**

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**Docket No. 06-1799
Issued: January 5, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2006 appellant filed a timely appeal from an April 28, 2006 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Because more than one year elapsed between issuance of the Office's April 8, 2005 merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On January 14, 2003 appellant, then a 40-year-old modified mail processing clerk, filed a claim for an October 22, 2002 anxiety attack. She called into work to request leave under the Family Medical Leave Act (FMLA) and was threatened by the employee who answered. Appellant stopped work and has not returned.

In an October 25, 2003 statement, appellant stated that her request for FMLA and/or leave without pay (LWOP) status under a previously accepted claim was granted when she called in to her attendance control office on October 21, 2002.¹ However, when she called on October 22, 2002 to change her leave request from FMLA to injured-on-duty status, she was informed that she needed medical documentation to substantiate her absence. If it was not provided, appellant would be charged absent without leave (AWOL). She stated that she felt threatened because the person who answered the telephone would not answer her questions of why further medical documentation was needed and kept repeating the statement about being charged AWOL.

Appellant submitted a January 3, 2003 Office decision pertaining to her accepted work injury of August 2, 1994, together with medical reports from Dr. Conrad P. Weller, a Board-certified psychiatrist, dated October 2002 through October 2003. In an October 31, 2002 note, Dr. Weller opined that appellant was disabled from performing her work duties due to an exacerbation of her compensable psychiatric condition since October 22, 2002.

By decision dated November 17, 2003, the Office denied appellant's claim on the basis that she did not sustain an injury in the performance of duty. It found that she had not established a compensable employment factor as there was no evidence of error or abuse in the administration of a personnel matter pertaining to her leave request.

On November 20, 2003 appellant disagreed with the Office's decision and submitted a request for an oral hearing before an Office representative. A hearing was held on October 1, 2004. Appellant submitted a document from the employing establishment pertaining to safety rules.

In a January 16, 2004 email, Yvonne Rowell, FMLA Coordinator, denied threatening appellant during the October 22, 2002 telephone conversation.

By decision dated April 8, 2005, the Office hearing representative affirmed the November 17, 2003 decision. He found that appellant did not establish a compensable factor of employment.

In an April 7, 2006 letter, appellant requested reconsideration. She contended that her reconsideration rights be preserved pending a decision in her federal civil case. Appellant alleged that the employing establishment erred in its administration of leave matters and that she had been threatened with disciplinary action up to and including removal if she did not submit sufficient medical documentation in support of her absence. She submitted a December 5, 1996 publication of the Office of Personnel Management pertaining to the FMLA, a copy of the Case Management and Scheduling Order for her federal civil case, copies of publications or procedures regarding absences and documentation requirements, call-ins and the FMLA at the employing establishment, and a January 25, 2002 letter, which noted that appellant had been accepted for FMLA coverage from January 23 through October 17, 2002.

¹ Under Office file number 060603418, appellant has an accepted claim for a back/neck injury and an emotional condition from an August 2, 1994 work injury.

By decision dated April 28, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion 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 of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

In an April 8, 2005 decision, the Office hearing representative found that appellant had not established a compensable factor arising in the performance of duty. On April 7, 2006 appellant disagreed with this decision and requested reconsideration, which was denied by decision dated April 28, 2006. The underlying issue in this case is whether appellant established a compensable factor of employment with respect to the administration of leave matters.

In her request for reconsideration, appellant alleged that the employing establishment erred in its administration of leave matters. However, 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. Additionally, appellant did not submit any relevant or pertinent new evidence not previously considered by the Office. Her request merely noted that she had a federal civil suit pending. Appellant also submitted materials regarding absences and documentation requirements, call-ins and the FMLA, which are general in nature and do not involve her particular claim. This evidence, although new, fails to raise a substantive legal question and is not relevant to the issue of whether the employing establishment erred in requesting additional medical documentation to support her leave request. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

Appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office. The Board finds that she is not

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

entitled to a merit review.⁶ The Office did not abuse its discretion by refusing to reopen appellant's claim for further review of the merits.

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 April 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ See *James E. Norris*, 52 ECAB 93 (2000).