

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

K.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Holland, MI, Employer**

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**Docket No. 07-552
Issued: June 6, 2007**

Appearances:

*Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 20, 2006 appellant filed a timely appeal from a December 1, 2006 nonmerit decision of the Office of Workers' Compensation Programs that denied her request for further merit review of her claim. Because more than one year has elapsed between the Office's most recent merit decision, January 31, 2005, and the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3. The only decision properly before the Board is the Office's December 1, 2006 decision denying appellant's request for further merit review of her 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

This case has previously been on appeal before the Board.¹ In a November 15, 2005 decision, the Board affirmed the January 13, 2005 decision of the Office, finding that appellant had not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty. The Board found that appellant had not established any compensable factors of employment. The facts and the history contained in the prior appeal are incorporated by reference.

By letter dated November 4, 2006, appellant requested reconsideration and enclosed additional evidence. She alleged that she recovered from her on-the-job injury on March 26, 2004 and requested that she be returned to her position which she held at the time of her injury, a rural carrier. Appellant alleged that instead, she was placed in a bid clerk position on April 17, 2004. She alleged that she was harassed by the craft clerk employees on a daily basis, since she was given the rehabilitation job offer in September 2000. Appellant further alleged that she was harassed by the craft clerk employees because she was in their craft and not returning to her rural craft. She also alleged that she took a detail in the Grand Rapids office away from the clerk craft employees to escape the harassment. Appellant alleged that on June 4, 2004 she was called by a temporary supervisor, Dave Wentworth, who called her at home and told her that she was to return to the bid position of distribution clerk, that she had lost all grievances and that she would never return to the rural carrier position again. She alleged that she was also advised that if she “said anything hostile about not returning to my rural craft he would have me fired.” Appellant alleged that she returned to work in the distribution clerk position with grievances still in place and was subjected to screaming from the other clerks related to her schedule and vacation time. She noted that when she returned to the clerk position she continued to be harassed and that she was so upset that her supervisor, Malcolm Miller, allowed her to go home on July 24, 2004. Appellant thereafter went to her physician, who referred her to a psychologist. She also alleged that stress affected her other conditions including her diabetes and kidney problems. Appellant enclosed a January 4, 2005 statement from Cheryl Boeskoal, a coworker, which was previously submitted, who alleged that she saw Mr. Wentworth cross out information regarding appellant’s pay status. She also enclosed a copy of a previously received document dated December 28, 2004 from Tammy Haines, a rural carrier, who alleged that her route was made into an auxiliary route so that appellant could not “come back as a rural carrier.”

In a report dated September 13, 2006, Dr. Nelson Zwaanstra, a psychologist, noted appellant’s history of injury and treatment. He diagnosed adjustment disorder with mixed anxiety and depression mood and noted that appellant had diabetes and a prior neck injury. Dr. Zwaanstra opined that he released appellant to go back to work on January 4, 2006. He noted that he could “see no reason why she could not perform her duties as a rural carrier.”

The Office also received a December 1, 2005 letter of separation from the employing establishment and a copy of a July 28, 2004 report from Dr. James Bleicher, Board-certified in internal medicine, which was previously of record.

¹ Docket No. 05-1000 (issued November 15, 2005).

The Office also received an October 4, 2004 statement from Beth Bekins, a neighbor, who indicated that on June 4, 2004 she came over to see how appellant's garage sale was going when she overheard appellant speaking on the telephone. Ms. Bekins noted that the conversation was not pleasant. She indicated that, when she asked appellant what happened, she advised her that she was "fired."

By decision dated December 1, 2006, 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,² 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 regulation, 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

"(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]."³

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.⁴

ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on November 4, 2006. 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.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

⁴ 20 C.F.R. § 10.608(b).

In her November 4, 2006 request for reconsideration, appellant essentially reiterated her previous arguments. As noted above, this involved allegations that she was not allowed to return to work as a rural carrier and that she was being harassed by clerk craft employees when she returned to a rehabilitation job offer in September 2000. Appellant also reiterated her previous allegations that she took a detail position away from the work location and that her condition improved. She also alleged that she was called at home by a temporary supervisor, advised that she had lost all her grievances and that she would never return to the rural carrier craft. Appellant alleged that she was so upset that on July 24, 2004 her supervisor, Mr. Miller, allowed her to go home. Additionally, she alleged that she was subsequently referred to a psychologist. Additionally, appellant alleged that the stress had affected her other medical conditions. The Board notes that she merely reiterated her previous contentions regarding the employing establishment's actions which she believed were stressful. Appellant also submitted documents that were previously of record. Those documents include the statements from Ms. Haines and Ms. Boeskoal, and a copy of a July 28, 2004 report from Dr. Bleicher, which were previously received and addressed in the prior decisions. 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.⁵ Appellant did not provide any relevant and pertinent new evidence to establish that she sustained an emotional condition in the performance of duty.

Appellant also included a letter from the employing establishment related to her separation, and an October 4, 2004 statement from Ms. Bekins, her neighbor, regarding her termination by the employing establishment. However, these reports are not relevant as they do not offer any relevant evidence to support or establish a compensable employment factor.⁶

Appellant also submitted a September 13, 2006 report from Dr. Zwaanstra. However, she has not established a compensable factor of employment. Because of this, it is premature to consider medical evidence addressing causal relationship.⁷ The Board notes that 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.⁸

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.

⁵ *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

⁶ See *Sharon K. Watkins*, 45 ECAB 290 (1994) (actual termination of employment, by itself, is not covered under the Act).

⁷ See *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

⁸ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB116 (2000).

CONCLUSION

The Board finds that 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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2006 is affirmed.

Issued: June 6, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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