

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

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V.B., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, DAYTON** )  
**INTERNATIONAL AIRPORT, Vandalia, OH,** )  
**Employer** )

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**Docket No. 07-1320**  
**Issued: September 26, 2007**

*Appearances:*

*John J. Scaccia, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 16, 2007 appellant filed a timely appeal from the December 18, 2006 merit decision of the Office of Workers' Compensation Programs which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision to deny a reopening of her case.

**ISSUE**

The issue is whether the Office properly denied appellant's June 5, 2006 request for reconsideration.

**FACTUAL HISTORY**

On June 13, 2003 appellant, then a 42-year-old stakeholder liaison, filed an occupational disease claim alleging that her severe generalized anxiety was a result of a hostile work

environment, demeaning comments, sexual harassment and threats in the course of her federal employment. The Office accepted her claim for major depressive disorder and post-traumatic stress disorder. It found that the evidence established three compensable factors of employment and that the medical opinion evidence sufficiently connected at least one of these compensable factors to appellant's diagnosed emotional condition.

Appellant thereafter claimed compensation for wage loss beginning June 4, 2003. The Office denied that claim on March 9, 2006. It found that the opinion of the attending clinical psychologist, Dr. H. Owen Ward, Jr., was insufficient to establish injury-related disability beginning June 4, 2003. The Office noted that Dr. Ward who began treating appellant on July 12, 2004, more than a year after the start of the claimed disability, derived his opinion from the earlier reports of a family physician and a licensed social worker, both of whom lacked the professional expertise to address appellant's emotional condition.

On June 5, 2006 appellant requested reconsideration. She submitted, among other things, an April 25, 2006 report from Dr. Joseph Smith, her family physician:

"I am [appellant's] family physician. I am [B]oard[-]certified in family medicine, and I am licensed in the state of Ohio to diagnose and treat medical and mental conditions. I can provide work releases when deemed necessary. I have read Dr. Ward's report and I concur [with] his findings concerning [appellant]. I diagnosed [appellant] with mental illness on her initial presentation to my office on April 14, 2003. On that date she was diagnosed with generalized anxiety disorder and major depressive disorder and started on psychotropic medication. I subsequently, followed [appellant] and treated her for these disorders. I also referred her to a psychologist and comanaged her mental illness with Dr. Ward, when she began seeing him. At the time of my initial diagnosis and initiation of her treatment, [appellant] was employed with the Safety Administration."

In a decision dated December 18, 2006, the Office denied appellant's request for reconsideration. It found that the evidence submitted was insufficient to warrant a merit review of her case. The Office found that Dr. Smith's April 25, 2006 report had no bearing because he provided no credentials to substantiate his claim that he was a psychiatrist or licensed psychologist.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>1</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.605 (1999).

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### ANALYSIS

The reason the Office denied appellant's claim for wage loss beginning June 4, 2003 was that Dr. Ward, her clinical psychologist, based his opinion on the reports of professionals who were not found competent to address the issue of emotional disability for work, including Dr. Smith, appellant's family physician. In his April 25, 2006 report, Dr. Smith responded directly to the Office's finding. He explained that he was Board-certified in family medicine and licensed in the state of Ohio to diagnose and treat medical and mental conditions.<sup>6</sup> The Office abused its discretion by disregarding relevant medical evidence submitted in support of appellant's claim. While a physician's qualifications may have a bearing on the probative value of the medical opinion expressed, it does not mean that the report may be disregarded by the Office.<sup>7</sup> The evidence submitted on reconsideration shows that Dr. Smith had the professional expertise to address appellant's mental condition, something the Office determined he did not possess as a family physician. It establishes, in turn, that the Office could not fault Dr. Ward for his reliance on Dr. Smith's findings.

Because this evidence is new and goes directly to the basis of the Office's March 9, 2006 merit denial, the Board finds that appellant's June 5, 2006 request for reconsideration satisfies the third standard for obtaining a merit review of her claim. The Board will set aside the Office's decision denying reconsideration and remand the case for an appropriate final decision on the merits of appellant's claim for wage loss beginning June 4, 2003.

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<sup>3</sup> *Id.* at § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> Dr. Smith did not claim, as the Office asserted, that he was a psychiatrist or licensed psychologist.

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3 (October 1994).

**CONCLUSION**

The Board finds that the Office abused its discretion by denying appellant's June 5, 2006 request for reconsideration. She submitted relevant and pertinent new evidence not previously considered by the Office and is therefore entitled to a merit review of her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 18, 2006 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further action consistent with this opinion.

Issued: September 26, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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