

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

G.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Prior Lake, MN, Employer**

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**Docket No. 08-1553
Issued: March 5, 2009**

Appearances:
Charles M. Cockrane, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 7, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' February 4, 2008 decision which denied appellant's request for merit review. Because more than one year has elapsed between the last merit decision dated January 22, 2007 and the filing of this appeal on May 7, 2008, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On July 8, 2005 appellant, then a 57-year-old postmaster, filed an occupational disease claim alleging that she developed profound anxiety due to her employment. She first became aware of her condition on March 26, 2005 and first realized the relationship with her employment on June 10, 2005. Appellant stated that she requested a downgrade to a lower level

office to reduce her stress, and that when this request was granted she realized that she needed time off as well as counseling.

In a letter dated July 18, 2005, the Office requested additional factual and medical evidence in support of appellant's emotional condition claim. Appellant submitted a series of notes from Dr. William M. Spinelli, a physician, addressing her condition. On May 19, 2005 Dr. Spinelli noted that appellant had voluntarily changed to a small post office and was experiencing sadness and crying spells due to leaving her prior position. He diagnosed anxiety and depression. In a May 25, 2005 note, Dr. Spinelli stated that appellant could not work due to stress-induced symptoms related to transferring from one job to another.

Appellant submitted narrative statements and attributed her emotional condition to an extreme shortage of rural carriers in 2000 and 2004. She stated that, on a daily basis, she did not know if she could get the mail delivered as required. Appellant stated that she violated union contracts to ensure delivery of rural mail. In November 2002 she was required to work 60-hour weeks due to the retirement of a supervisor. Appellant also noted that her post office was designated for seven clerks and that she had between six and four from February to September 2003. She attributed her condition to the work-related death of an employee on March 19, 2004, which resulted in additional responsibilities toward the other grieving employees. Appellant's post office moved to a new facility on November 11, 2004 and she did not receive the necessary help to facilitate the move. She stated that she experienced too many demands including new programs with deadlines, mandatory training sessions, meetings, hiring attempts and the requirement of less than a five-minute line wait for customers. Appellant stated that she was unable to complete the rural route count in the allotted time period, that she received reprimands from the district management for trivial infractions. She received approval for a smaller office on March 18, 2005. Appellant began to feel overwhelmed on March 26, 2005 and requested vacation time prior to assuming her new post.

The employing establishment responded on August 2, 2005 and stated that appellant adjusted other employee's schedules so that the mail was delivered in a timely fashion. The employing establishment further agreed that appellant moved to a new facility.

Dr. C. Alan Steed, a clinical psychologist, completed a report on October 4, 2005 diagnosing major depressive disorder. He noted that appellant attributed her condition to building a new facility and the work-related death of an employee.

By decision dated November 10, 2005, the Office denied appellant's claim for a work-related emotional condition, finding that she failed to submit factual evidence substantiating her allegations of overwork or inappropriate discipline.

Appellant, through her attorney, requested reconsideration on November 9, 2006 and submitted additional evidence. She stated that her anxiety and depression was due to the constant shortage of employees, to working as both a postmaster and a supervisor for five months, to overseeing the move to a new facility and to continual demands of her position which if unmet could result in disciplinary action. Yvonne Zahratka, a retired postmaster, submitted a statement dated October 25, 2005 asserting that appellant was very short staffed during the scheduled move to the new facility and was fulfilling the duties of both a postmaster and a

supervisor. Appellant submitted statements from Harvey Langer, a rural carrier and union steward, Steve Steele, Mark Ritchie, and Diane Olson, employees, Doug Lingen, a former manager, and Joyce Bergman, the postmaster at Hamel post office as well as Diane Pederson, postmaster at Elysian, addressing appellant's various allegations regarding employees, the move to the new facility and her workload. These witnesses agreed that there were severe employee shortages, that to cover these shortages appellant was required to violate the union contract, that she worked 60 hours a week to cover her position and that of the supervisor who retired, that there was no help provided for the move to the new facility, that the mandatory security system in the new building did not work, and that the new stamp vending machine did not work. On July 18 and September 22, 2003 appellant requested to hire additional clerks as her post office required six clerks and she currently employed four. She received approval to hire one clerk on February 9, 2004.

By decision dated January 22, 2007, the Office denied appellant's claim finding it was not sufficient to warrant modification of the November 10, 2005 decision. It found that she had not provided a sufficiently detailed description of the employment events or activities that she felt or contributed to her emotional condition.

Appellant through her attorney, requested reconsideration on October 11, 2007 and submitted additional evidence. She submitted a medical report dated March 6, 2007 from Dr. John Patrick Cronin, a licensed clinical psychologist. Appellant also submitted medical treatment notes dated February 8 and March 22, 2007. She submitted a calendar dated January through March 2005 with notations. Appellant also submitted a 2005 training plan and a guide to personnel resources as well as e-mails directing her to complete courses.

By decision dated February 4, 2008, the Office declined to reopen appellant's claim on the grounds that the medical evidence submitted was irrelevant.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that the evidence or argument submitted by 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 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 on the merits.³

¹ 5 U.S.C. §§ 8101-8193, § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

ANALYSIS

Appellant, a postmaster, alleged that she developed an emotional condition due to factors of her federal employment. In its January 22, 2007 merit decision, the Office denied her claim finding that she had not provided a sufficiently detailed description of the employment events or activities that she felt or contributed to her emotional condition. Appellant, through her attorney requested reconsideration on October 11, 2007. In support of her request for reconsideration, she submitted medical evidence. As the Office has not accepted that appellant implicated a compensable factor of employment, this medical evidence is not relevant to the issue for which the Office denied appellant's claim and is not sufficient to require the Office to reopen her claim for consideration of the merits.

Appellant also submitted a calendar, training plan and e-mails directing her to enlist in online courses. These documents do not substantiate a previously implicated factor of employment. These are apparently appellant's review of the events of 2005 and are not witness' statements or other documentation supporting appellant's allegations. As these documents are not relevant to the central issue in the case, whether appellant has substantiated a compensable factor of employment, the Office properly declined to reopen her claim for consideration of the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for consideration of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board