

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

C.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Providence, RI, Employer**

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**Docket No. 09-2103
Issued: June 1, 2010**

Appearances:

*James F. Malatos, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 24, 2009 appellant filed a timely appeal from a March 19, 2009 decision of the Office of Workers' Compensation Programs denying her request for reconsideration. Because more than one year has elapsed from the most recent merit decision dated February 11, 2008 to the filing of this appeal on August 24, 2009, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

The issue is whether the refusal of the Office to review the merits of appellant's claim constituted an abuse of discretion, pursuant to 5 U.S.C. § 8128(a).

On appeal appellant, through her representative, contends that she has an emotional condition causally related to her federal employment.

¹ For final adverse decisions of the Office issued before November 19, 2008, a claimant has up to one year to appeal to the Board. See 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On December 18, 2006 appellant, then a 57-year-old postmaster, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder and major depressive disorder/generalized anxiety disorder as a result of her federal employment. In a February 16, 2007 statement, she contended that her emotional condition was caused by several incidents, which occurred at different postal locations.² Appellant submitted medical evidence in support of her claim.

In a June 20, 2007 decision, the Office denied appellant's claim finding that she failed to establish a compensable factor of employment giving rise to her claimed condition. On September 21, 2007 appellant requested reconsideration. In a February 11, 2008 decision, the Office denied modification of its June 20, 2007 decision after merit review.

By letter dated October 17, 2008, received by the Office on October 22, 2008, appellant again requested reconsideration.

By decision dated March 19, 2009, the Office denied reconsideration without reviewing the merits of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ 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.⁴ 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

² Appellant held various positions and worked at various branches during her employment as a postmaster. On February 16, 2007 she set forth numerous conditions and incidents that she alleged caused her emotional condition. Appellant noted that, while she worked at the Buzzards' Bay location from 1989 until 1992, a customer threatened to kill her and her daughter. She alleged that she was subjected to physical intimidation and verbal abuse by the postmaster. Appellant noted that, when her clerk resigned, she was not given the help she needed and that she had to work 60 to 70 hours a week, six days a week. She noted that she transferred to the Sangamore office, where she worked from 1992 to 1999. Appellant indicated that, while she was working there, a note was left on her door during her lunch period threatening to kill her. In December 1999, she transferred to West Harwick to work as a postmaster, where she alleged her requests for additional help were ignored and that she had to work from 6:00 am through 5:30 pm. Appellant noted that in August 2001 she resigned as postmaster and returned to West Harwick as a part-time flexible clerk. She stated she worked for several branches on a part-time basis but eventually left the Providence area to relocate to Charleston, SC. Appellant alleged that the Charleston branch was isolated and understaffed and robberies and shootings were prevalent. She noted that she then transferred to Florida where she was subjected to a hostile environment and was threatened by an employee.

³ Under section 8128(a) of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

of the date of that decision.⁵ 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.⁶

ANALYSIS

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration. When the Office delays a reconsideration decision beyond 90 days and such delay jeopardizes the claimant's right to review of the merits of the case before the Board, it should conduct a merit review.⁷ On October 22, 2008 appellant requested reconsideration of the Office's February 8, 2008 merit decision. However, the Office did not issue a decision on her request until March 19, 2009, a delay of almost five months. Such delay precluded appellant from seeking a merit review by the Board. The Board will remand the case to the Office for a merit review in order to protect appellant's rights.⁸

CONCLUSION

The Board finds that the Office abused its discretion in denying appellant's request for reconsideration of the merits of her claim.

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 1997).

⁸ *Janice M. Hatcher*, 55 ECAB 155 (2003); *Joseph L. Cabral*, 44 ECAB 152 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision.

Issued: June 1, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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