

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN E. HAYES and U.S. POSTAL SERVICE,
POST OFFICE, Edmond, Okla.

*Docket No. 97-1795; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On August 25, 1986 appellant, then a 32-year-old postal clerk, filed a claim alleging that she sustained stress due to the shooting and death of friends in Edmond, Oklahoma on August 20, 1986 which the Office accepted for anxiety reaction.

On April 28, 1994 appellant filed a recurrence claim alleging her post-traumatic stress disorder was related to her accepted employment injury. In an attachment, appellant alleged that she has been harassed by her supervisor and there were threats by an employee to "shoot up the place."

By letter dated June 8, 1994, the Office informed appellant that the information submitted was insufficient to establish a recurrence of disability and advised her as to the information required.

In a memorandum dated April 4, 1994, Susan Onstott, LSCW, stated that appellant was suffering from post-traumatic stress disorder.

By decision dated August 5, 1994, the Office denied appellant's claim for a recurrence of disability. In the attached memorandum, the Office noted that allegations of harassment were unsubstantiated. The Office also found that the report from Ms. Onstott did not qualify as a medical report as Ms. Onstott was not a physician under the Federal Employees' Compensation Act and, thus, appellant had not submitted any medical evidence in support of her claim.

Appellant requested a hearing before an Office hearing representative which was held on June 15, 1995.

In a report dated April 7, 1995, Dr. R. Keith Green, Ph.D., diagnosed an anxiety disorder. Dr. Green noted that appellant stated that she was being harassed by her supervisor and that an employee threatened to shoot up the office.

By decision dated October 5, 1995, the Office hearing representative denied appellant's claim for a recurrence of disability on the basis that the evidence of record failed to establish that the claimed recurrence of disability was causally related to her accepted employment injury. The hearing representative found that there was nothing in the record to substantiate that the factors appellant identified as the cause of her recurrence had occurred, as alleged.

By letter dated October 1, 1996, appellant, through counsel, requested reconsideration of the October 5, 1995 decision. No evidence or argument was submitted with the request for reconsideration.

By decision dated November 5, 1996, the Office denied appellant's request as she failed to clearly identify the grounds for her reconsideration request nor did she submit relevant evidence not previously considered.

The only Office decision before the Board on this appeal is the Office's November 5, 1996 decision, finding that appellant's application for reconsideration was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on October 5, 1995 and the filing of appellant's appeal on February 5, 1997, the Board lacks jurisdiction to review the merits of appellant's claim.¹

The Board finds that the Office properly denied appellant's request for reconsideration on the grounds that she failed to submit relevant new evidence or advance a legal point of argument not previously considered by the Office.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

requirements the Office will deny the application for review without reviewing the merits of the claim.

Appellant's reconsideration request dated October 1, 1996 included a request by appellant's counsel for an additional 60 days to gather medical evidence and to review the file. Appellant's counsel did not submit any new medical evidence with the request nor advance any point of law not previously considered by the Office. The Office issued its decision on November 5, 1996 denying appellant's request for reconsideration as she had not submitted new evidence nor advanced a point of law that had not been previously considered by the Office. Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128 of the Act.² The Board finds that the Office did not abuse its discretion by denying appellant's reconsideration request as appellant failed to submit any relevant and pertinent evidence relative to whether appellant had established that she sustained a recurrence of disability causally related to her accepted August 20, 1986 employment injury.

The decision of the Office of Workers' Compensation Programs dated November 5, 1996 is affirmed.

Dated, Washington, D.C.
May 20, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² See *Jeanette Butler*, 47 ECAB 128 (1995); *John B. Montoya*, 43 ECAB 1148 (1992).