

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. COMBS and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, Va.

*Docket No. 97-2329; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's March 17, 1997 request for reconsideration.

In a decision dated March 15, 1996 and finalized March 18, 1996, the Office found that the evidence failed to substantiate three of the nine factors of employment, to which appellant attributed her emotional condition and that the remaining factors were not compensable under the Federal Employees' Compensation Act.

On March 17, 1997 appellant requested reconsideration. In support thereof she submitted a January 14, 1997 statement, from a coworker who witnessed an incident in or about April 1993 in which a male employee sneaked up on appellant from behind and grabbed her while she was sorting mail. The coworker stated that appellant was furious and reported the incident to her supervisor. Appellant also submitted a March 10, 1997 report, from Dr. Norman L. Wilson, a psychiatrist, who stated that appellant had a severe aggravation of her preexisting post-traumatic stress disorder and major depressive disorder when a male employee suddenly grabbed her from behind. This surprise attack, Dr. Wilson explained, immediately triggered very severe symptoms of anxiety, intrusive flashbacks, feelings of panic and horror connected with appellant's rape in 1974 and a marked worsening of her depression. Dr. Wilson reported that this incident was a proximate cause of the severe aggravation of appellant's conditions to the point that she could no longer go to her workplace or anywhere near the building in which she worked without precipitating feelings of panic and fragmentation.

In a decision dated April 15, 1997, the Office denied a merit review of appellant's claim.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously

considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹

The witness statement of January 14, 1997 is new evidence and tends to support that one of the three incidents found to be unsubstantiated did occur as alleged. Further, the medical evidence of March 10, 1997, tends to support that this incident was a proximate cause of a severe aggravation of appellant's preexisting post-traumatic stress disorder and major depressive disorder. The Board, therefore, finds that appellant supported her March 17, 1997 request for reconsideration with relevant and pertinent evidence not previously considered by the Office and that she is entitled to a merit review of her claim under the third criterion above.²

The April 15, 1997 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for an appropriate final decision on the merits of appellant's claim.

Dated, Washington, D.C.
May 14, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹ 20 C.F.R § 10.138(b)(1).

² Because this finding requires the Office to grant appellant's request for reconsideration, the Board need not address other evidence or argument submitted to support that request.