U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIRELDA ALVARADO-EMBADE and SMALL BUSINESS ADMINISTRATION, Hato Rey, PR

Docket No. 98-1999; Submitted on the Record;
Issued April 19, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has duly reviewed the case record and concludes that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Section 10.138(b)(1) 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] 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 requirements, the Office will deny the application for review without reviewing the merits of the claim.[2]

On December 23, 1996 appellant, then a 40-year-old business opportunity specialist, filed a claim for an emotional condition which she attributed to an incident on December 19, 1996 when her supervisor, Luis Rodriguez, advised her to obtain union representation because he needed to speak to her about an incident of misconduct that occurred on December 4, 1996.[3]

[1] 20 C.F.R. § 10.138(b)(1).

[2] 20 C.F.R. § 10.138(b)(2).

[3] In memoranda dated December 5 and 26, 1996, Mr. Rodriguez related that on December 4, 1996 appellant advised him that she was not going to attend a training course for which she had been nominated one month earlier. He stated that he contacted the training office and learned that appellant sent an email to the training office on November 18, 1996 advising that she would not attend the training course but he noted that she had failed to advise him or any other supervisor that she would not attend the course until December 4, 1996. Mr. Rodriguez indicated that when he spoke to appellant regarding her action, she told him that the employing establishment had no right to interfere in her personal life.

Mr. Rodriguez then met with appellant and a union representative and informed her that he was recommending administrative action regarding the December 4, 1996 incident. He stated that appellant did not tell him on December 19, 1996 that she was ill and he noted that she reported for duty on Friday, December 20, 1996 and Monday, December 23, 1996 and attended a union holiday party on Saturday, December 21, 1996. By decision dated February 26, 1997, the Office denied appellant's claim for compensation benefits on the grounds that she had failed to establish that her claimed emotional condition was causally related to a compensable factor of employment. The Office found that Mr. Rodriguez's action in scheduling appellant for a training course constituted an administrative action by the employing establishment and the evidence of record did not establish that Mr. Rodriguez erred or acted abusively in the handling of this administrative matter.

By letter dated February 25, 1998, appellant requested reconsideration of the denial of her claim and submitted additional evidence. By decision dated March 10, 1998, the Office denied appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office of Workers' Compensation Programs extends only to those final decisions issued within one year prior to the filing of the appeal.[4] As appellant filed her appeal with the Board on June 12, 1998, the only decision properly before the Board is the Office's March 10, 1998 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's February 26, 1997 decision denying appellant's claim for compensation benefits.[5]

Among the evidence submitted by appellant in support of her February 25, 1998 request for reconsideration of the Office's February 26, 1997 decision was medical evidence. However, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office because the Office denied appellant's claim on the grounds that no compensable factor of employment had been established. Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.[6]

Appellant also submitted evidence unrelated to the December 19, 1996 incident which was the subject of her claim for compensation benefits and therefore this evidence does not constitute relevant and pertinent evidence not previously considered by the Office. This evidence consisted of information regarding Equal Employment Opportunity Commission complaints filed by appellant concerning other work situations and incidents unrelated to the December 19, 1996 work incident, a document regarding an October 31, 1996 employing establishment "Team Leader Implementation Plan," and an arbitration decision regarding an April 12, 1996 incident when someone parked in appellant's parking space.

In a letter to the employing establishment dated January 21, 1997, appellant's attorney related appellant's belief that Mr. Rodriguez's statement regarding the fact that she attended the

[4] 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[5] *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

[6] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

union party on December 21, 1996 constituted harassment, that Mr. Rodriguez improperly gave her a letter of a proposed suspension on January 8, 1997 in an open area where other employees were present, that other employees had declined training courses and were not subjected to disciplinary action, that the proposed five-day suspension regarding the training course incident was not warranted, and that appellant was being discriminated against because of her gender and her position as a union officer. However, this letter does not constitute relevant and pertinent evidence not previously considered by the Office as it does not address the specific issue as to whether the December 19, 1996 incident involving appellant and Mr. Rodriguez, alleged by appellant to be the cause of her claimed emotional condition, constituted a compensable factor of employment.

Appellant also submitted a copy of her November 18, 1996 e-mail to the training office advising that she would be unable to attend the training course scheduled for December 9 to 13, 1996 and a copy of the October 21, 1996 announcement concerning the training course. She submitted a letter to the employing establishment dated February 5, 1997 in which she stated that Mr. Rodriguez erred in relating that she worked on December 23, 1996 and that she went to work only to complete a claim form. Appellant submitted a March 24, 1997 letter to an Equal Employment Opportunity counselor in which she stated that she told Mr. Rodriguez on December 5, 1996 that she could not attend the training course because of family and personal health problems. She submitted a letter dated December 2, 1997 in which the employing establishment responded to a discrimination complaint filed by appellant. None of this evidence constitutes relevant and pertinent evidence not previously considered by the Office as it does not address the issue as to whether the December 19, 1996 work incident alleged by appellant to be the cause of her claimed condition was a compensable factor of employment.

Appellant also submitted affidavits from co-workers who related that appellant told them she experienced various symptoms due to the December 19, 1996 work incident including a rapid heartbeat. These statements do not constitute relevant and pertinent evidence not previously considered by the Office as they do not address the issue as to whether the incident on December 19, 1996 constituted a compensable factor of employment.

As appellant failed to show that the Office erroneously applied or interpreted a point of law, and did not advance a point of law or a fact not previously considered by the Office or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated March 10, 1998 is affirmed.

Dated, Washington, D.C.
April 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member