

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. JOHNSON and DEPARTMENT OF THE NAVY,
CIVILIAN PERSONNEL OFFICE, Camp Pendleton, CA

*Docket No. 98-2370; Submitted on the Record;
Issued February 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's December 24, 1997 request for reconsideration.

In a decision dated December 23, 1996, but issued December 24, 1996, the Office found that appellant's allegations that she sustained an emotional condition while in the performance of duty were either unsubstantiated or not compensable.

Appellant requested reconsideration on December 24, 1997. She submitted evidence to show that an Equal Employment Opportunity (EEO) complaint was pending, not dismissed as the hearing representative indicated. She submitted evidence to show that she did stop work, contrary to the hearing representative's assertion. She submitted an EEO counselor's report, which summarized appellant's allegations of discrimination by her supervisor and which summarized the statements of witnesses. The report supports that there was a problem with appellant's performance evaluation as her supervisor made no written comments on her rating sheet as he did on the rating sheets of others. Appellant submitted a statement from a mentor/trainer who remembered a time when appellant was struggling and would hold her daily work assignments until the next day for reverification. The mentor/trainer stated that appellant felt that her work was being purposely sabotaged but that these were only her feelings and not the truth. Appellant also submitted a letter from her attorney expressing surprise and disappointment at the denial of her case. Appellant argued that her illness was definitely work related and that there was "an appropriate application of law regarding the work-related stress during the hearing."

In a decision dated March 30, 1998, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted in support of appellant's request for reconsideration was irrelevant and immaterial.

The Board finds that the Office properly denied appellant's December 24, 1997 request for reconsideration.

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 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 criteria, the Office will deny the application for review without reviewing the merits of the claim.² Evidence that does not address the particular issue involved constitutes no basis for reopening a case.³

Appellant did not show that the Office erroneously applied or interpreted a point of law, nor did she advance a point of law or a fact not previously considered by the Office. Accordingly, she may not obtain a merit review of her claim based on the first or second criterion set forth above.

Appellant, instead, offered several enclosures as additional evidence. This evidence, however, fails to satisfy the third criterion above. It is immaterial to the denial of appellant's claim that an EEO complaint is pending and not dismissed. What is needed to support appellant's allegations is a favorable EEO decision or finding that supports error or abuse by the supervisor in an administrative or personnel matter. A pending EEO complaint offers no such support. Also, it is immaterial whether appellant stopped work. That she did stop work fails to demonstrate erroneous or abusive behavior by the supervisor. The EEO counselor's report is merely a summary of charges and statements and contains no finding on the merits of appellant's EEO complaint of discrimination. The report supports that appellant's supervisor failed to make written comments on appellant's rating sheet, as he did on the rating sheets of others, but there is no evidence to show how this omission was erroneous or abusive. That there was a time when appellant struggled, holding her assignments for reverification because she thought her work was being sabotaged, does not support her allegation that she was overworked. The letter from her attorney expressing surprise and disappointment at the denial of her case does not prove that the Office erroneously denied her claim, nor does her argument that her illness was definitely work related.

As appellant's December 24, 1997 request for reconsideration fails to satisfy at least one of the three criteria for obtaining a merit review of her claim, the Board finds that the Office properly denied her request.

¹ 20 C.F.R. § 10.138(b)(1).

² *Id.* § at 10.138(b)(2).

³ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The March 30, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member