

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENISE L. HARRINGTON and U.S. POSTAL SERVICE,  
POST OFFICE, Carrington, ND

*Docket No. 00-464; Submitted on the Record;  
Issued January 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case record on the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

The Board's jurisdiction to consider and decide appeals from a final decision of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed the appeal with the Board on October 8, 1999, the only decision before the Board is the June 28, 1999 decision denying reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Workers' Compensation Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section

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<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> Section 10.606(b)(2)(i-iii).

10.606(b)(2).<sup>3</sup> If reconsideration is granted, the case is reopened and the case is reviewed on the merits.<sup>4</sup>

In the present case, appellant alleged that she became aware that she sustained depression and situational stress from her employment on January 2, 1998. She stated that, since she had a September 29, 1997 employment injury, she was abused and harassed. Appellant stated that her supervisor and the postmaster, Thomas Kessel, forced her to either read training manuals or listen to audio tapes for up to seven hours a day for almost three months in the training room which was in the basement in a cold, poorly lit room with bars on the windows.

By decision dated June 10, 1998, the Office denied appellant's claim, stating that she failed to establish that she sustained an injury in the performance of duty. By decision dated June 28, 1999, the Office denied appellant's request for merit review of her claim.

By letter dated June 4, 1999, appellant requested reconsideration of the Office's June 10, 1998 decision. She submitted a lengthy statement which consisted of an approximate daily record of her problems at work from October 7 through December 29, 1997. Appellant stated that when she returned to work after her September 29, 1997 ankle injury there was not enough work for her to do and Mr. Kessel made her spend many hours reading training manuals or listening to audio tapes in the basement for almost a three-month period. She stated that she began to cry when discussing with Mr. Kessel how she hated being in the basement. Appellant also stated that she was denied a standard request for a schedule change for personal convenience on "Form 3189" on December 24, 1997 and Mr. Kessel required her to take annual leave instead. She filed a grievance against Mr. Kessel for denying her the schedule leave which she stated was settled in her favor. An undated memorandum, which is actually a settlement, received by the Office on June 8, 1999 to Mr. Kessel and appellant from a "union management" pair found that Mr. Kessel's denial of the schedule leave was not justified and reinstated appellant's annual leave on December 24, 1997.

Appellant submitted several witness statements from coworkers, friends and from a massage therapist dated from February 21 to May 29, 1999. Many of these statements corroborated that appellant's prolonged activity of having to listen to tapes in the basement at work was upsetting her to the point where it made her cry. One witness stated that on May 29, 1999 he saw appellant emerge from Mr. Kessel's office on two occasions in tears and that she told him that Mr. Kessel told her that she would be fired if she did not "shape up." He stated that appellant called numerous times on the telephone in tears.

Appellant also submitted a work climate survey which is not dated or signed. She submitted medical evidence consisting of medical reports and progress notes from her treating physician, Dr. John D. Collins, a clinical psychologist, dated from January 7, 1998 through June 9, 1999. In his medical documents, he noted that appellant experienced stress at work when she had to repeatedly listen to training tapes in the basement. Dr. Collins diagnosed anxiety

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<sup>3</sup> Section 10.608(a).

<sup>4</sup> *Id.*

disorder and situational stress. In the June 9, 1999 report, he stated that a short course of psychotherapy was effective in helping appellant deal with her anxiety.

It appears that the Office erred in failing to find that the union and management's settlement reinstating appellant's annual leave on December 24, 1997 was not relevant. If credited, it could establish that management abused its discretion in an administrative matter.<sup>5</sup> None of the medical evidence, however, attributes the specific factor of appellant's being denied schedule leave on December 24, 1997 to her emotional condition.<sup>6</sup> The Office's error in failing to find the settlement relevant therefore is harmless.

None of the other evidence appellant submitted constitutes relevant and pertinent evidence not previously considered by the Office. Her daily log of upsetting occurrences from October 7 through December 29, 1997 consisting of Mr. Kessel making her repeatedly read training manuals or listen to audio tapes in the basement, abusing or harassing her or denying her schedule leave request on Christmas Eve presents information which was already in the record and considered by the Office. Similarly, the witness statements appellant submitted informing the Office that she had to repeatedly read training manuals or listen to audio tapes in the basement to the point where it made her cry described occurrences previously described in the record and considered by the Office. The work climate survey was previously submitted. The medical reports and progress notes from Dr. Collins dated from January 7, 1998 through January 9, 1999 which state that appellant experienced stress from repeatedly listening to training tapes in the basement at work are not relevant to the Office's prior determination that appellant did not establish a compensable factor of employment.<sup>7</sup>

In the present case, appellant has not established that the Office abused its discretion in its June 28, 1999 decision by denying her request for a review on the merits of its June 28, 1999 decision under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

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<sup>5</sup> See *Martha L. Cook*, 47 ECAB 226, 231-32 (1995); *Joe L. Wilkerson*, 47 ECAB 606-07 (1996).

<sup>6</sup> See *James W. Griffin*, 45 ECAB 774, 779 (1994).

<sup>7</sup> See *Alberta Kinlock-Wright*, 48 ECAB 459, 461-62 (1997).

The decision of the Office of Workers' Compensation Programs dated June 28, 1999 is hereby affirmed.

Dated, Washington, DC  
January 17, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member