

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALLAS MARLATT and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 00-609; Submitted on the Record;
Issued March 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
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 his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On June 11, 1998 appellant filed a claim for an emotional condition, Form CA-2, stating that he sustained stress on the job when, in November 1997, his acting boss informed him that he was going to receive an unacceptable performance evaluation because his boss and postmaster, Gary Penn, told him anyone with a "P.I.E." score below good had to receive an unacceptable. Appellant stated that he had been a station manager since 1985, and had received outstanding or very good evaluations throughout his career until Mr. Penn returned as his boss. He stated that, since that time, he had been ridiculed, embarrassed and joked at by his peers and craft employees which caused him to become angry, frustrated and physically unable to do his job. Appellant appealed the unacceptable evaluation he received but without success.

Appellant submitted a witness statement from the manager of customer service, Donald J. Hamilton, who stated that, while he worked at the Northeast Station, appellant came to him almost daily to discuss the shortage of carriers and the fact that he had supervisors with little or no experience. He also stated that, during the certification process, appellant told him that he was not receiving support for the route adjustments that he needed. Appellant submitted a medical report dated July 7, 1998 from Dr. Hugh J. Hallbeck, who stated that he first saw appellant on May 14, 1998 when he complained about excessive amount of stress at work due to an excessive workload and improper assistance. He summarized appellant's medical treatment, examined him and diagnosed acute and persistent anxiety syndrome, improved.

In a report dated August 10, 1998, Dr. Manuel Suguitan, a psychiatrist, noted that appellant spoke of "continuous harassment, repeated innuendoes and pressure of job" and stated that he was prevented from entering the building to pick up his paycheck. He diagnosed severe anxiety disorder and recommended that appellant return to the office in six weeks.

By decision dated August 12, 1998, the Office denied the claim, stating that the evidence of record failed to establish that appellant sustained an emotional condition while in the performance of duty.

By letter dated May 13, 1999, appellant requested reconsideration of the Office's decision alleging that his emotional condition resulted from his being overworked. Appellant submitted additional evidence consisting of statements from witnesses that he experienced stress at work or did not receive adequate support from management to perform his job, or had to work additional hours at the Rio Salado Station. For instance, in her statement dated November 5, 1998, the supervisor of customer service, Sharon White, stated that appellant told her he was "feeling a great deal of stress" because of the functioning of Northeast Station and was leaving early for a doctor's appointment to address the problem. In a statement dated November 3, 1996, the supervisor of customer services who worked with appellant for three years, Keith Norton, stated that they were put "under tremendous pressure to accomplish goals handed down to us from upper management which were unrealistic and unattainable." He stated that they "were transferred from station to station without being given a chance to fix any of the problems at the station or to show a marked improvement." Mr. Norton stated that they had a "severe manpower shortage."

In a statement dated February 24, 1999, appellant's coworker, Donald J. Hamilton, stated that appellant was station manager at the Northeast Station in Phoenix, Arizona from October 1996 through May 1998 and that during this time he was also assigned to readjust routes at the Rio Salado Station. He stated that, "almost on a daily basis," he and appellant discussed the readjustment process and the fact that appellant received no assistance from his supervisor to make the adjustments or assistance to follow-up with his supervisory duties at the Northeast Station. Mr. Hamilton stated that many times appellant started working as early as 5:00 a.m. at the Northeast Station, and then would go over to the Rio Salado Station to work. Appellant also submitted a memorandum dated August 8, 1996 from the employing establishment and related documents describing changes in the merit performance evaluation for fiscal year 1997.

The record contains an investigative report from the employing establishment dated August 24, 1998 in which appellant was observed driving while intoxicated.

By decision dated August 4, 1999, the Office denied appellant's request for reconsideration, without merit review.

The Board finds that the Office's refusal to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted 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.¹ As appellant filed the appeal with the Board on October 21, 1999, the only decision before the Board is the August 4, 1999 decision, denying appellant's request for reconsideration.

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

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' 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.² 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 10.606(b)(2).³ If reconsideration is granted, the case is reopened and the case is reviewed on the merits.⁴

The witness statements appellant submitted addressed that appellant was overworked, did not receive adequate support from management to complete his work, and suffered from stress due to overwork. These statements specifically related to appellant's claim that being overworked at work caused him emotional stress. The witness statements constitute new and relevant evidence not previously considered by the Office. Contrary to the Office's finding, appellant may submit additional evidence and expand his claim for factors that occurred during the same time period of his current claim. The witness statements appellant submitted are relevant to and supportive of his claim that he sustained emotional distress at work due to his being overworked. The case must therefore be remanded for the Office to consider appellant's argument that his being overworked resulted in his emotional condition and to consider whether the evidence he submitted establishes a factor of employment which caused his emotional condition. Upon remand, after any further development the Office deems necessary, the Office shall issue a *de novo* decision.

With the submission of the evidence in support of his request for reconsideration, appellant has established that the Office abused its discretion in its August 4, 1999 decision under section 8128(a) of the Act in failing to reopen the record because the evidence appellant submitted constitutes relevant and pertinent new evidence not previously considered by the Office.

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

⁴ *Id.*

The decision of the Office of Workers' Compensation Programs dated August 4, 1999 is hereby set aside and the case remanded for further consideration consistent with this opinion.

Dated, Washington, DC
March 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member