

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIMBERLY PRICE and DEPARTMENT OF VETERANS AFFAIRS,  
JOHN D. DINGELL MEDICAL CENTER, Detroit, MI

*Docket No. 02-818; Submitted on the Record;  
Issued August 7, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on April 2, 2001; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing.

Appellant, a 39-year-old housekeeping aide, filed a notice of occupational disease on July 5, 1999 alleging that she developed depression due to factors of her federal employment. Appellant indicated that she first became aware of her condition on June 19, 1998. Appellant attributed her depression to actions of a coworker. By decision dated October 13, 1999, the Office denied appellant's claim finding that she failed to substantiate a compensable factor of employment.

Appellant requested reconsideration on November 10, 1999 and submitted additional factual and medical evidence. By decision dated February 28, 2000, the Office denied modification of its October 13, 1999 decision. Appellant requested reconsideration on January 9, 2001 and submitted additional evidence. By decision dated April 2, 2001, the Office declined to reopen appellant's claim for consideration of the merits finding that she failed to submit relevant new evidence.

Following the Office's April 2, 2001 decision, appellant requested an oral hearing on October 19, 2001. By decision dated November 15, 2001, the Branch of Hearings and Review denied appellant's request finding that she was not entitled to a hearing as a matter of right.<sup>1</sup>

The Board finds that the Office did abuse not its discretion by refusing to reopen appellant's claim for consideration of the merits on April 2, 2001.

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<sup>1</sup> Appellant filed her appeal with the Board on February 7, 2002. The Board's jurisdiction is limited to final decisions of the Office issued within one year of the date of the appeal to the Board. Therefore, the Board will only consider the April 2 and November 15, 2001 decisions of the Office on appeal. 20 C.F.R. § 501.3(d)(2).

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup>

In support of her January 9, 2001 request for reconsideration, appellant submitted a narrative statement. She alleged that she had written documentation that the employing establishment had a pattern for not accepting her doctor's recommendations in past incidents. Appellant also alleged that she experienced stress from 1993 to 1996 and that the employing establishment was responsible for this stress. However, she stated, "As you can see I did have other instances in my life during these times as stated by Leonard G. Palmeri that could have affected my mental well being, but they do not count for the stressors that I face today with Henry Kass and Samuel Scott." Appellant alleged that Mr. Kass had other incidents with coworkers. She stated that she had taken measures to eliminate physical contact with Mr. Kass and Mr. Scott. Appellant indicated that Mr. Kass was allowed to work overtime on weekends with his supervisor present. However, she stated that Mr. Kass worked with his supervisor, Mr. McGill was not present with the consent of Mr. Palmeri and that this ignored her needs and put her at physical and mental risk.

Appellant submitted medical evidence regarding her work restrictions during her pregnancy in 1995 and 1996. She also alleged that the employing establishment mishandled her leave requests during her pregnancy and refused to allow her to resume work when released by her physician.

Although appellant submitted new evidence, the evidence submitted is not relevant to the reasons for which the Office denied appellant's claim. The Office previously found that appellant had not submitted sufficient factual evidence to substantiate the conflicts with Mr. Kass and Mr. Scott which would require remedial steps by the employing establishment. Therefore, appellant's additional unsubstantiated allegations regarding contact with these gentlemen which occurred after she allegedly developed her condition and filed her claim and which she feels was inappropriately allowed by the employing establishment are not relevant as she has not submitted the necessary evidence to establish that the employing establishment erred by not prohibiting contact between appellant and Mr. Kass.

Appellant had previously alleged that the employing establishment failed to comply with her physician's restrictions regarding contact with Mr. Kass. In support of her reconsideration request, she also alleged that the employing establishment had a history of failing to comply with her physician's restrictions. In support of this allegation, appellant submitted the restrictions her physician prescribed for her last pregnancy. It appears from appellant's request for reconsideration that she believes that the 1995 and 1996 alleged employment incidents did not result in her current condition. She stated in her reconsideration request that, while these events "could" have resulted in an emotional condition, alleged harassment from Mr. Kass was what caused her condition. Therefore, this evidence is not relevant to the issue for which the Office

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<sup>2</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

denied appellant's claim, whether she had established a compensable factor of employment which led to the development of her currently diagnosed emotional condition.

As appellant has failed to submit relevant new evidence, the Office properly declined to reopen her claim for consideration of the merits.

The Board further finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act,<sup>3</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>4</sup>

In this case, appellant requested an oral hearing on October 10, 2001. This request followed the Office's April 2, 2001 decision denying appellant's request for reconsideration. By decision dated November 15, 2001, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that she had previously requested reconsideration and that the issue in her case could equally well be addressed by again requesting reconsideration and submitting evidence not previously considered that established that she suffered an emotional condition as a result of compensable factors of her employment.

Section 8124(b) of the Act clearly states that a claimant is only entitled to an oral hearing before review under section 8128(a). In this case, appellant has received review under section 8128(a) on April 2, 2001 and February 28, 2000. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case could be resolved through the submission of evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

The November 15 and April 2, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
August 7, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member