U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY J. YOST and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

Docket No. 00-1992; Submitted on the Record;
Issued February 27, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretion to reopen appellant's case for further consideration of the merits of her claim.

The only decision before the Board on this appeal is the Office's March 6, 2000 decision denying appellant's application for a review on the merits of its March 1, 1999 decision.[1] Because more than one year has elapsed between the issuance of the Office's March 1, 1999 merit decision and May 15, 2000, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the March 1, 1999 merit decision.[2]

Under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[4] which provides that a claimant may obtain review of the merits if her written

[1] By decision dated March 1, 1999, the Office modified its November 10, 1997 decision wherein an Office hearing representative affirmed a July 12, 1996 decision which found that appellant failed to establish fact of injury in establishing her emotional condition claim. The Office, however, affirmed the denial of the case on the grounds that appellant failed to establish that she was injured in the performance of duty.

[2] *See* 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C § 8128(a).

[4] 20 C.F.R. § 10.606(b) (1999).

application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[5] If a claimant fails to submit relevant evidence not previously of record or advance legal contentions or facts not previously considered, the Office has the discretion to refuse to reopen a case for further consideration of the merits pursuant to section 8128.[6] The submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[7]

In the present case, appellant's claim for compensation for an emotional condition was denied on the basis that she failed to establish a compensable employment factor under the Act and, therefore, had not met her burden of proof. With her reconsideration request of February 9, 2000, appellant submitted evidence. However, such evidence is insufficient to require reopening of appellant's case for further review of the merits of her claim as it is either irrelevant, immaterial or duplicative of evidence already within the case record.

Appellant submitted a copy of a Form DD-214, showing that she served in the U.S. Army; a copy of her job duties; and a receipt for the purchase of flowers for a coworker along with a copy of the coworker's thank you note. This evidence is irrelevant to appellant's claim of harassment. Her previous service in the U.S. Army and the purchase of flowers for a coworker have no bearing on whether appellant sustained an injury in the performance of duty. Appellant's job description is irrelevant as the issue in this case is harassment and appellant has not alleged that her job duties caused her stress. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.[8]

Appellant submitted several witness statements from coworkers or persons who had worked in the employing establishment where appellant alleged the harassment occurred. Although several statements attest to the fact that appellant's supervisor, Gail Joyner, had yelled or acted inappropriately, none of these statements provide a specific instance or event related to

[5] 20 C.F.R. § 10.608(b) (1999).

[6] *John E. Watson*, 44 ECAB 612, 614 (1993).

[7] *Jerome Ginsberg*, 32 ECAB 31 (1980).

[8] *John E. Watson*, *supra* note 6.

appellant's allegations and, therefore, cannot support or serve to corroborate appellant's allegations of harassment by the employing establishment.[9]

Appellant submitted a copy of a Social Security Administration (SSA) decision dated September 16, 1998, which was previously of record, and found that appellant suffers from depression and anxiety. She also submitted a copy of a March 23, 1999 Labor Arbitration finding that a grievance filed by appellant was timely filed. The Board has held that disability and factual determinations made by other agencies pursuant to other statutory schemes are not binding on the Office or the Board with respect to whether the individual is disabled under the Act.[10] Inasmuch as appellant filed a claim for harassment at work, the SSA determination regarding appellant's medical condition has no bearing on this claim as it is irrelevant to a determination as to whether appellant has established a compensable factor of employment. Likewise, the March 23, 1999 Labor Arbitration decision does not pertain to the issue at hand.

Appellant also submitted numerous medical records and reports from Drs. Edward Carey and Robert Millet pertaining to her medical condition from September 1998 through February 2000. However, as appellant failed to establish a compensable factor of employment and, thus, failed to establish that she sustained an emotional condition in the performance of duty, the medical evidence is not relevant for consideration at this time.

In the present case, appellant has not established that the Office abused its discretion in its March 6, 2000 decision by denying her request for a review on the merits of its March 1, 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, failed to advance a point of law or a fact not previously considered by the Office or failed to submit relevant and pertinent evidence not previously considered by the Office.

As the only limitation on the Office's authority is reasonableness, an abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[11] Appellant has made no such showing here.

[9] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[10] *See Stephen R. Lubin*, 43 ECAB 564, 568 (1992); *Hazelee K. Anderson*, 37 ECAB 277, 283 (1986).

[11] *Daniel J. Perea*, 42 ECAB 214 (1990).

Consequently, the decision of the Office of Workers' Compensation Programs dated March 6, 2000 is hereby affirmed.

Dated, Washington, DC
February 27, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member