

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY L. GASKINS and U.S. POSTAL SERVICE,  
POST OFFICE, Sacramento, CA

*Docket No. 03-1758; Submitted on the Record;  
Issued September 10, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

The case was before the Board on a prior appeal. In a decision dated June 21, 1999, the Board found that appellant was entitled to a merit review of her claim.<sup>1</sup> Following the return of the case record, the Office issued a decision dated September 27, 1999 rescinding acceptance of the claim and terminating medical benefits.<sup>2</sup> The Office noted that two employment incidents had been accepted as compensable: (1) an April 4, 1994 incident when two clerks refused to assist appellant with training because appellant was not a member of the clerks union and union rules prohibited training a carrier for a clerk's position; and (2) an April 13, 1994 incident when a coworker remarked that the "stupid" limited-duty carrier that used to work in personnel must have thrown away a document currently being sought. The Office determined that the April 4, 1994 incident was not related to her regular or specially assigned duties, but to a perception of job insecurity. With respect to the April 13, 1994 incident, the Office found that it was not compensable as it was an isolated incident, not related to regular or specially assigned duties, with no evidence that the coworker was referring to appellant. In addition, the Office reiterated that appellant had not established as compensable any other allegations, such as a hostile work environment and failure to receive adequate training.

In a letter dated September 6, 2000, appellant requested reconsideration of her claim. In a decision dated December 18, 2000, the Office reviewed the case on its merits and denied

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<sup>1</sup> Docket No. 98-138 (issued June 21, 1999).

<sup>2</sup> The Office issued a notice of proposed termination of medical benefits and rescission by letter dated August 17, 1999.

modification. By letter dated March 8, 2001, appellant requested reconsideration.<sup>3</sup> In a decision dated February 1, 2002, the Office reviewed the case on its merits and denied modification.

In a letter dated December 31, 2002, appellant again requested reconsideration. Appellant noted that the Office had stated in its last decision that she had not submitted a copy of any grievance settlement with respect to her removal from the personnel office; she submitted a letter dated May 20, 2002 from an official from the letter carriers union that there were no available records with regard to the removal of limited-duty carriers from their assignments during the period in question. Appellant also submitted a letter dated February 7, 1983 from the employing establishment's Director of Grievance and Arbitration regarding obligations under the employee and labor relations manual to injured employees.

By decision dated March 26, 2003, the Office denied appellant's request for reconsideration finding that the accompanying evidence was not sufficient to require reopening the claim for merit review.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.<sup>4</sup> As appellant filed her appeal on June 24, 2003, the only decision over which the Board has jurisdiction on this appeal is the March 26, 2003 decision denying her request for reconsideration.

The Board finds that the Office properly denied appellant's request for reconsideration.

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>5</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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>6</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If

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<sup>3</sup> Although dated March 8, 2001, the letter was received by the Office on November 7, 2001.

<sup>4</sup> See 20 C.F.R. § 501.3(d).

<sup>5</sup> 20 C.F.R. § 10.605 (1999).

<sup>6</sup> *Id.* at § 10.606.

reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

In this case, the December 31, 2002 request for reconsideration and the accompanying evidence do not meet any of the standards set forth in section 10.606. In her letter, appellant reiterated her belief that she was subjected to harassment, noting that she had pending actions filed with the Equal Employment Opportunity (EEO) Commission. Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

Moreover, she did not submit any new and relevant evidence with respect to her claim. Appellant indicated that her EEO claims were pending, without submitting any relevant evidence pursuant to these claims. The evidence submitted on reconsideration is not relevant to the underlying issues on compensable work factors. The May 20, 2002 letter from the union official confirms that appellant was one of the injured employees moved out of the West Sacramento Delivery Operations Offices, a fact that was not in dispute. The underlying issue is whether there was a compensable work factor, and the letter indicates only that there is no longer any supporting documentation regarding placement of these employees. The February 7, 1983 letter provides only a general statement from an employing establishment official regarding injured employees, without discussing appellant or providing any relevant evidence with respect to a compensable work factor based on the allegations made by appellant in this case.

The Board accordingly finds that appellant did not meet any of the standards for reopening the case for merit review. Since she did not meet any of the three standards enumerated in section 10.606, the Office properly denied the application for reconsideration without reopening the case for a review on the merits.

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<sup>7</sup> *Id.* at § 10.608.

The decision of the Office of Workers' Compensation Programs dated March 26, 2003 is affirmed.

Dated, Washington, DC  
September 10, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member