United States Department of Labor
Employees' Compensation Appeals Board

LI-FANG LIANG, Appellant	)	
and	)	**Docket No. 03-2300**
	)	**Issued: May 27, 2004**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, San Francisco, Employer	)	

Appearances:
Li-Fang Liang, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 22, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated August 19, 2003, which denied her request for reconsideration. Because more than one year has elapsed between the last merit decision dated July 31, 2002 and the filing of this appeal on September 22, 2003 the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). On appeal appellant contends that the Office erroneously applied a point of law when it failed to find that the apology given by her supervisor for screaming at her and throwing the telephone to the floor on January 20, 2001 constituted evidence of error and abuse.

FACTUAL HISTORY

On March 26, 2001 appellant, a 41-year-old flat sorting machine operator, filed an occupational disease claim alleging that she became aware that she had depression on January 12, 1999 and realized on March 26, 2001 that it was due to employment factors. She attributed her condition to Virginia Evans, her supervisor, yelling at her and throwing a telephone to the floor on January 20, 2001 and in failing to accommodate her physical restrictions. On the back of the claim form, Ms. Evans contended that the information submitted by appellant was false and that the yelling incident had been settled.

Appellant submitted a March 28, 2001 settlement agreement, in which Ms. Evans apologized to appellant for yelling at her on January 20, 2001 after Ms. Evans became upset with another individual.

In a June 14, 2001 letter, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. She was allotted 30 days to submit the requested evidence. No evidence was submitted by appellant.

In a June 28, 2001 letter, Ms. Evans stated that she raised her voice not at appellant but at a supervisor in the unit. Ms. Evans stated that appellant "does not understand English very well and misunderstood my action as directed towards her." Regarding the January 12, 1999 incident, she noted the "sharp placement of the telephone was not directed at appellant."

In a July 18, 2001 decision, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury in the performance of her duties. The Office accepted as factual that on January 20, 2001 Ms. Evans sharply placed the receiver of her telephone down as she was upset with the caller; that Ms. Evans raised her voice on that date while talking to another supervisor; and that appellant was not given a part-time flexible schedule or overtime, but that this was a normal administrative function and no error or abuse was shown. The Office noted that Ms. Evans' raising her voice while giving instruction or criticism to appellant did not constitute verbal abuse. The Office found that, even if Ms. Evans had raised her voice, this was an administrative function and was not compensable unless the evidence showed that she had acted unreasonably or abusively.

Appellant requested an oral hearing in a July 31, 2001 letter and submitted a witness statement, a July 27, 2001 report by Dr. George D. Karalis, an attending physician specializing in psychiatric treatment and the March 28, 2001 settlement agreement. In the witness statement, Margo Carter stated that she "heard/saw [Ms.] Evans yelling and screaming [appellant's name] on Jan[uary] 20th, 2001" and that she saw Ms. Evans throw the telephone to the floor.

Dr. Karalis, diagnosed major depression which he attributed to appellant's supervisor's actions on January 20, 2001 when Ms. Evans yelled at appellant and threw a telephone on the floor. He opined that appellant was traumatized by a prior December 31, 1998 yelling incident, but the January 20, 2001 incident "precipitated the present mental illness." He stated that "the 1998 yelling incident presensitized [appellant] to Ms. Evans' abuses and the January 20, 2001 yelling incident actually precipitated/caused the current psychiatric illness (Major Depressive

Episode)." Dr. Karalis opined that but for the January 20, 2001 incident, appellant would not have sustained her psychiatric illness.

In a January 11, 2002 letter, appellant requested that the hearing representative review the written record and waived her right to an oral hearing. She submitted additional evidence, including a January 7, 2002 statement regarding the January 20, 2001 incident, witness statement and supplemental report by Dr. Karalis, amending portions of his July 27, 2001 report. Dr. Karalis opined that appellant could not "work under or near Ms. Evans or under overly heavy workloads." He attributed her stress to supervisory abuse.

By decision dated July 31, 2002, the Office hearing representative affirmed the denial of appellant's claim. The hearing representative found that, although the settlement agreement called for Ms. Evans to apologize to appellant due to a misunderstanding, there was no error or abuse established and the January 20, 2001 incident was not a compensable factor of employment.

Appellant requested reconsideration in a July 16, 2003 letter and submitted evidence in support of her request. The evidence submitted included the settlement form and agreement to mediate, the witness statement from Ms. Carter, appellant's statement dated January 7, 2002 and July 27, 2001 report and supplemental report by Dr. Karalis.

By decision dated August 19, 2003, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act[1] vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[2] Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[3]

Section 10.608(a) of the Code of Federal Regulation provides that a timely request for reconsideration may be granted if the Office determines that the claimant has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[4] The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point

[1] 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[2] *Raj B. Thackurdeen*, 54 ECAB ___ (Docket No. 02-2392, issued February 13, 2003); *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

[3] 20 C.F.R. § 10.608(a).

[4] 20 C.F.R. § 10.606(b)(1)-(2); *see Sharyn D. Bannick*, 54 ECAB ___ (Docket No. 03-567, issued April 18, 2003).

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.[5]

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[6]

ANALYSIS

The issue in the instant case is whether appellant is entitled to a merit review of the denial of her claim for an emotional condition. In order to obtain merit review, appellant must submit a timely application for reconsideration in writing and submit pertinent and relevant new evidence, advance a relevant legal argument not previously considered by the Office or show that the Office erroneously applied or interpreted a specific point of law. Appellant contended that the Office erroneously applied a point of law when it failed to find that appellant established a compensable factor of employment with regards to the apology given by Ms. Evans under the settlement agreement. The settlement agreement contained no admission of an error or abuse on the part of the employing establishment. Appellant previously raised this contention before the Office hearing representative, who found no error or abuse. Appellant has not advanced a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a further merit review of her claim.

The only evidence appellant submitted in support of her request was the settlement form and agreement to mediate, the witness statement from Ms. Carter, appellant's statement dated July 7, 2002 and a July 27, 2001 report and supplemental report by Dr. Karalis. This evidence was already submitted to the record and was previously considered by the Office in its merit decisions. The evidence submitted by appellant is not new and relevant evidence but duplicative of that already considered. Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement of 20 C.F.R. § 10.608(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied her July 16, 2003 request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

[5] 20 C.F.R. § 10.608(b).

[6] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 19, 2003 is affirmed.

Issued: May 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member