

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA VERBEEK and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

*Docket No. 98-1661; Submitted on the Record;
Issued February 25, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On April 18, 1996 appellant, then a 31-year-old account representative, filed a notice of occupational disease and claim for compensation alleging that she sustained an emotional condition due to stress at work. She stated on her CA-2 form that "any type of interaction with Denise Hill, her manager, made her stressed." Appellant indicated that she first realized that her condition was related to her employment on May 2, 1995. She stopped work on January 17, 1996 and has not returned to work since that date.

In support of her claim, appellant submitted a 14-page attachment to her CA-2 form, outlining in diary form, incidents and conversations with Ms. Hill between October 5, 1993 and January 16, 1996. She essentially contended that her manager harassed her about her dress, about how she answered the phone, about lunch breaks and overall work performance.

In a May 4, 1996 statement, Ms. Hill responded that she never harassed appellant and that appellant's stress was self-induced. The employing establishment also submitted statements from appellant's coworkers, which generally denied appellant's allegations of abusive behavior by Ms. Hill and stressful working conditions.

On June 6, 1996 the Office requested that appellant submit additional information and evidence in support of her claim.

In a statement dated July 5, 1996, appellant alleged that she was discriminated against by Ms. Hill and constantly harassed. She stated that stress at work caused her to break down emotionally, suffer changes in sleep and eating habits, develop a bowel problem and experience anxiety, depression, headaches and acne.

In a decision dated December 20, 1996, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

On November 22, 1997 appellant filed a request for reconsideration and submitted medical treatment notes and various disability statements from her treating physician.

In a decision dated January 23, 1998, the Office denied appellant's reconsideration request, finding the evidence submitted on reconsideration to be insufficient to warrant a merit review. The Office noted that, while appellant submitted new medical evidence in support of her claim, she failed to submit evidence relevant to the issue of whether she sustained an emotional condition in the performance of duty.

The Board finds that the Office properly denied appellant's request for a merit review under section 8128.

The only decision before the Board on this appeal is the Office's January 23, 1998 decision, which denied appellant's request for a review of the merits of her claim under 5 U.S.C. § 8128(a). Since more than one year elapsed between the date appellant filed her appeal on April 23, 1998 and the prior Office decision dated December 20, 1996, the Board lacks jurisdiction to review that prior decision.¹

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ When application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁶ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously

¹ 20 C.F.R. § 501.3(d) requires that an appeal must be filed within one year from the date of issuance of the final decision of the Office.

² 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁷

The Office denied appellant's claim for compensation based on her emotional condition because she failed to establish error or abuse on behalf of the employing establishment in the administration of her personnel matters. On reconsideration, appellant has not alleged that the Office erroneously applied or interpreted a point of law; nor has she advanced a point of law or a fact not previously considered by the Office in this case. In support of her reconsideration request, appellant submitted additional medical evidence but that evidence is not pertinent to the issue in this case, which is whether appellant's supervisor acted abusively. Because appellant did not offer any new and relevant evidence on reconsideration to establish the factual basis of her allegations of harassment, the Board finds that the Office properly denied her request for a merit review.⁸

The decision of the Office of Workers' Compensation Programs dated January 23, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 25, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁸ Appellant's allegations without corroborating witness statements were found by the Office to be insufficient to establish that she was harassed by Ms. Hill. Appellant has not provided any additional witness statements to support her claim and warrant reconsideration.