

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA S. WYLIE and U.S. POSTAL SERVICE,
POST OFFICE, Sparks, NV

*Docket No. 00-2647; Submitted on the Record;
Issued March 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay; (2) whether appellant has met her burden of proof in establishing that she was disabled by the accepted condition of anxiety from August 14 through 25, 2000; and (3) whether the Office abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

On April 24, 2000 appellant, a 45-year-old mail carrier, filed a claim for benefits based on an emotional condition. Appellant stated on the Form CA-1 that she became "stressed" after encountering child customers and because her head was struck when her postal vehicle ran over a skate ramp. By letter dated April 26, 2000, the employing establishment controverted the claim, contending that she was not entitled to continuation of pay. The employing establishment stated that appellant had filed a Form CA-1 claim for traumatic injury despite the fact that she told her physician that her condition developed over a period of time; the employing establishment, therefore, asserted that continuation of pay was not appropriate. Appellant was off work from April 25 until May 4, 2000, when she returned to full duty.

In a report dated April 24, 2000, Dr. Roger M. Belcourt, a Board-certified family practitioner, stated:

"This postal carrier reports that she has been having increased problems at her center since last November, when a new group of managers came on. She has experienced a lot of stress behind this and a decreased job satisfaction. Today she was driving down a street when she almost hit a child. In her evasive maneuvering apparently she hit a skateboard ramp. She felt very unsupported by her local postal management, who told her she was responsible for any repairs that would need to be made for the ramp.

"She is very upset about this and comes in as 'a nervous wreck, cannot function properly.' She states that today was 'the topper.' She states 'that with all of their

bitching and whining about me, I might as well come in her.’ She denies any inclination to do violence to any of her coworkers. She states that she is not suicidal. She has never filed a stress claim before. She has no history of treatment for depression or anxiety.”

Dr. Belcourt diagnosed anxiety and stress reaction and advised:

“I am removing her from the workplace and making recommendations for employee assistance and/or psychiatric evaluation. I am unclear at this point if I can sort out whether or not this medical visit is an attempt to ‘get back’ at management or is real in its desire for medical assistance, thus, I will assume that we need to get some psychiatric assistance here. I do not want her in that particular work environment until this can be sorted out and as so indicated.”

By letter dated May 11, 2000, the Office advised appellant that it had changed her claim to one based on occupational disease because her condition had allegedly developed over a period of time, as opposed to being caused by a single event. The Office further advised appellant that she needed to submit additional information in support of her claim. The Office requested that she submit additional medical evidence in support of her claim, including a comprehensive medical report and provide factual evidence, including statements from witnesses, which would establish that her claimed emotional condition was caused by factors of her employment.

By decision dated May 11, 2000, the Office found that appellant was not entitled to compensation for continuation of pay, as the information she submitted indicated that she was attributing her alleged condition to events other than those which occurred on April 24, 2000.

In a report dated August 15, 2000, Dr. Steven E. Rubin, a specialist in psychiatry, stated that appellant was emotionally unstable to such an extent that he recommended that she not return to work. Dr. Rubin related that appellant stated that she had been called into her station manager’s office due to an allegation that a colleague asserted she had resolved to “go postal.” Appellant denied making this remark to the coworker in question, but admitted that she had written a letter to a postal manager one month previously, in which she may have used the term “going postal.” He diagnosed mood disorder, adjustment disorder and stressors related to employment.

In a Form CA-7 dated August 22, 2000, appellant stated that she had stopped working at the employing establishment as of August 14, 2000 and requested sick leave buy back from August 16 to 24, 2000 and annual leave buy back for August 25, 2000. Appellant did not submit any additional factual or medical evidence with her request.

In a letter dated August 24, 2000, the employing establishment advised the Office that appellant had been removed from her position because she had made threats against coworkers. The employing establishment submitted letters from three of appellant’s coworkers, dated October 23, 1999 and August 17, 2000, who alleged that appellant had intimidated them and had made threats against them.

By decision dated October 24, 2000, the Office denied appellant's claim for compensation based on loss of wages from August 14 through 25, 2000. The Office stated that appellant had been removed from her position by the employing establishment pending an investigation of the alleged threat she made to a coworker and that, therefore, compensation for wage loss was not payable. The Office did accept a condition of anxiety and paid compensation for appellant's period of disability from April 24 through May 3, 2000.

By letters dated November 7, 2000, appellant requested reconsideration of the May 11 and October 24, 2000, Office decisions. She contended that she was entitled to continuation of pay for the April 24, 2000, work incident and that she was entitled to compensation for leave buy back from August 14 through 25, 2000. Appellant did not submit any additional medical evidence in support of her request.

By decision dated December 7, 2000, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decisions.

The Board finds that the Office properly denied appellant's claim for continuation of pay.

Section 8118 of the Federal Employees' Compensation Act¹ provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2)² of this title." By decision dated May 11, 2000, the Office denied appellant's claim for continuation of pay benefits on the grounds that the evidence she submitted indicated that her claimed emotional condition was developed over a period of time and did not result from a single, traumatic incident, as she had claimed in her Form CA-1. Thus, the Office found that the claim was not amenable to being adjudicated as one based on a traumatic injury and properly found in its May 11, 2000 decision, that appellant was not entitled to continuation of pay based on the alleged April 24, 2000 employment incident.

The Board finds that appellant has not established that she was disabled due to the accepted condition of anxiety from August 14 through 25, 2000.

In this case, Dr. Belcourt diagnosed anxiety and stress reaction in his April 24, 2000 report and placed appellant on disability until May 4, 2000, when she returned to work. Thus, the Office properly found in its October 24, 2000 decision, that appellant was entitled to compensation for the period from April 25 through May 3, 2000, only based on the accepted condition of anxiety. However, Dr. Rubin's August 15, 2000 report did not provide a probative, rationalized medical opinion establishing that appellant's alleged period of disability from August 14 through 25, 2000, was causally related to her accepted condition of anxiety.³ Dr. Rubin's opinion does not contain any medical rationale explaining how or why appellant's

¹ 5 U.S.C. § 8118.

² 5 U.S.C. § 8122(a)(2).

³ *William C. Thomas*, 45 ECAB 591 (1994).

anxiety condition was affected by or related to factors of employment during the period from August 14 through 25, 2000.⁴ Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence, which would indicate that her anxiety condition caused any wage loss for any additional period.

Consequently, appellant has not met her burden of proof, as she failed to establish that she sustained any additional employment-related disability.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁵ 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.⁶

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in prior decisions, or is not pertinent to the issue on appeal. Additionally, appellant's letter failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office acted within its discretion in refusing to reopen appellant's claim for a review on the merits.

⁴ *Id.*

⁵ 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

The December 7, October 24 and May 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member