

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD M. ELLIOTT and U.S. POSTAL SERVICE,  
POST OFFICE, Memphis, TN

*Docket No. 01-918; Submitted on the Record;  
Issued March 22, 2002*

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DECISION and ORDER

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

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On July 28, 1995 appellant, a 49-year-old letter carrier, filed a claim for employment-related emotional stress. In a typewritten statement received by the Office on August 18, 1995, appellant alleged that his supervisor had engaged in a pattern of harassment against him.

By letter dated August 18, 1995, appellant's supervisor refuted appellant's allegation that she had harassed him. She stated that she attempted to develop appellant's ability to perform his position, but that appellant had performed at a substandard level and had severe problems meeting the requirements of the position. The employing establishment submitted witness statements from two other employees which essentially corroborated the supervisor's statement.

In a report dated August 1, 1995, Dr. Dan W. Webb, Board-certified in internal medicine, stated that he had treated appellant for stress reaction resulting from a series of confrontations he had experienced with his supervisory personnel. Dr. Webb stated that appellant had suffered from depression for many years, and that his recent problems stemmed from his employment, which exacerbated his preexisting diabetes, hypertension and depression.

By decision dated July 15, 1996, the Office found that appellant failed to establish that his claimed emotional condition was causally related to his employment.

By letter dated July 10, 1997, appellant's attorney requested reconsideration.

By decision dated July 14, 1997, the Office denied reconsideration, finding that appellant failed to submit evidence sufficient to warrant modification of the previous decision.

By letter dated July 13, 1998, appellant's attorney requested reconsideration. Appellant submitted a July 10, 1998 report from Dr. Webb, who stated that he was treating appellant for diabetes, hypertension and, on occasion, depression. He also stated that he had treated appellant for back pain on two occasions. In a handwritten addendum dated July 13, 1998, Dr. Webb advised that the pain experienced by appellant had worsened his depression.

By decision dated September 14, 1998, the Office denied reconsideration, finding that appellant failed to submit evidence sufficient to warrant modification of the previous decision.

By letter dated September 19, 1999, appellant's attorney requested reconsideration.

By decision dated November 5, 1999, the Office denied reconsideration of the September 14, 1998 Office decision.

By letter dated November 6, 2000, appellant's attorney requested reconsideration. Appellant did not submit any new medical evidence with this request. However, appellant submitted new factual evidence which, his attorney contended, indicated that the employing establishment committed error or abuse by wrongfully charging him with striking a mailbox with his mail truck and not reporting it. This evidence consists of an employing establishment accident report, dated April 3, 1996, which contains a complaint from a customer who stated that her mailbox had been struck by a vehicle, and that she believed "the blue stripe of the mail truck" had struck the box. The report names appellant as "the involved person," and is signed by appellant's supervisor. Appellant also submitted an undated statement from a co-worker which states:

"I was present at a meeting with ... [various] safety officials when they were investigating [appellant]. It was determined by that committee [that] an incident of a vehicle wreck where a mailbox was determined to be a no-accident [sic] and that no mailbox was struck by appellant."

Appellant's attorney contended that the Office abused its discretion by failing to consider this relevant and pertinent evidence.

By decision dated February 1, 2001, 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 decision.

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's February 1, 2001 decision denying appellant's request for a review on the merits of its November 5, 1999 decision.

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.<sup>1</sup> 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.<sup>2</sup>

In the present case, by letter dated November 6, 2000, appellant's attorney requested reconsideration of the Office's November 5, 1999 decision finding that appellant failed to submit evidence sufficient to warrant modification of the July 15, 1996 decision which found that he failed to establish he had sustained an emotional condition causally related to factors of his employment. In support of this request, appellant submitted the April 3, 1996 accident report and the undated statement from a co-worker which supported his assertion that he had been wrongfully charged by the employing establishment with hitting a mailbox and failing to report it, and that the employing establishment had investigated the incident and cleared him of the charges. This constitutes relevant and pertinent evidence in that it indicates the employing establishment may have committed error or abuse in discharging its administrative duties.

For these reasons, appellant has submitted relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> Therefore, the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim constituted an abuse of discretion.

The decision of the Office of Workers' Compensation Programs dated February 1, 2001 is set aside. The case is remanded to the Office for review of the merits of appellant's claim and any other proceedings deemed necessary by the Office to be followed by an appropriate decision.

Dated, Washington, DC  
March 22, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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

<sup>2</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>3</sup> *See Carol Cherry*, 47 ECAB 658 (1996).