

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS KATSILOMETES and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, New York, NY

*Docket No. 02-91; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits.

On November 3, 1999 appellant, then a 34-year-old special agent for the Federal Bureau of Investigation (FBI) filed an occupational disease claim alleging that, from May 24 to 27, 1999, he suffered a mental breakdown during an in-service training course at the FBI Academy in Quantico. Appellant alleged that his supervisor misinformed him of the actual date of travel to the training course, assigned him to training, which did not match his skills level and denied his request to return to his duty station when he determined that the training was a waste of time. Appellant asserted that the actions of his supervisor ultimately led to his emotional condition and hospitalization.

Mr. Brown, appellant's supervisor responded to appellant's claim asserting that appellant volunteered for the training and was previously informed on April 7, 1999 of his travel arrangements to Quantico and description of the training course. Mr. Brown asserted that on May 25, 1999 appellant expressed his dissatisfaction with the course materials and requested to return to New York, however, he instructed appellant to remain at Quantico since he had volunteered for the training.

By decision dated May 4, 2000, the Office denied appellant's claim on the basis that he failed to establish that he sustained an employment-related injury as alleged. The Office found that the assignment of a work schedule or training, and a denial of a request of leave are administrative functions of the employer. The Office further found that there was no basis for a finding of error or abuse on the part of the employing establishment, therefore, any emotional reaction, which appellant might have experienced was self-generated and not compensable.

On April 17, 2001 appellant through counsel requested reconsideration and submitted argument and evidence. By decision dated July 12, 2001, the Office denied appellant's request

for further merit review on the grounds that the evidence submitted with the request was cumulative, repetitive and immaterial to the issue at hand.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in refusing to reopen appellant's claim for further review of the merits.

The only decision before the Board on this appeal is the Office's July 12, 2001 decision, denying appellant's request for a merit review of its May 4, 2000 decision. Because more than one year has elapsed between the issuance of the Office's prior decision and October 5, 2001, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the prior decision.¹

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁵

In his reconsideration request, appellant through counsel argued that his emotional reaction to the change in schedule with respect to the travel date from Sunday, May 23, 1999 to Monday, May 24, 1999 clearly constituted a compensable factor of employment. Appellant's counsel also argued that the action of appellant's supervisor to deny appellant's request to return to New York, despite the fact that his training in Quantico was inappropriate, was a compensable factor of employment. Appellant's counsel noted that the Office indicated in its May 4, 2000 decision that the employing establishment acted in an administrative capacity regarding the above situations, however, appellant's counsel argued that the employing establishment acted unreasonably in the administration of these matters which should afford coverage under the Act. Appellant's counsel further argued that the Office failed to develop the evidence by discounting the statements of appellant and accepting as truth, the statement from Mr. Brown, appellant's supervisor, without additional investigation.

¹ See 20 C.F.R. § 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

None of this evidence is new and relevant evidence on the issue of error by the employing establishment in an administrative matter.⁶ Appellant simply restated the allegations made in the November 3, 1999 claim, which purportedly caused his emotional condition. While the evidence does not have to establish a compensable work factor, it must be new and relevant evidence supporting the allegation of error in order to require reopening the claim for a merit review. Regarding appellant's contention that the Office failed to develop the record, the Board notes that the Office in a letter dated December 13, 1999 informed appellant that administrative actions were not compensable absent error or abuse. The Office advised appellant that, if he thought his case was a direct result of administrative error or abuse, he should submit corroborating evidence. The record does not contain any evidence to support error or abuse. This contention therefore is insufficient to warrant a merit review.

Appellant's counsel further submitted a psychiatric report dated March 19, 2000 from Dr. Alexander Bardey, a Board-certified psychiatrist. Although appellant attempts to offer relevant medical evidence, which the Office did not previously consider, such evidence, although new, is insufficient to require reopening of appellant's case for further review of the merits. As appellant failed to meet the fact of injury requirement in the prior decision, the medical report submitted by Dr. Bardey was immaterial since, no compensable factors of employment associated with appellant's emotional reactions and claimed conditions had been established.⁷

The Board finds that appellant did not meet any of the requirements under section 10.606(b)(2) and therefore the Office properly denied the request for reconsideration without merit review of the claim.

⁶ An administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment; see *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

The July 12, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 4, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member