

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERNIE A. CRAWFORD and U.S. POSTAL SERVICE,  
POST OFFICE, Memphis, TN

*Docket No. 02-712; Oral Argument Held September 16, 2003;  
Issued October 10, 2003*

Appearances: *C.B. Weiser, Esq.*, for appellant; *Thomas G. Giblin, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

On March 3, 1998 appellant, then a 53-year-old PTF carrier, filed an occupational disease claim alleging that employment-related stress was caused by unreasonable demands by his supervisor.<sup>1</sup> He had stopped work on February 19, 1998 and retired on disability, effective March 23, 1998. In support of his claim, appellant submitted a number of medical reports. In a letter dated March 23, 1998, the Office informed appellant of the type evidence needed to support his claim. By decision dated June 22, 1998, the Office denied the claim on the grounds that he did not establish that he sustained an injury in the performance of duty.

Appellant requested a hearing and submitted additional medical evidence, including a March 3, 1998 report from his treating Board-certified internist, Dr. George J. Smith, who noted appellant's complaints of chest pain and shortness of breath and that appellant related that he had returned to his regular duties of delivering mail. At the hearing, held on December 8, 1998, appellant testified that he was required to perform the full duties of a letter carrier which included lifting up to 70 pounds almost everyday and walking for 5 hours. A union steward, Leferre Ryan, also testified that appellant's job required heavy lifting on some days.

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<sup>1</sup> The record indicates that appellant had previously filed a claim with the Office for coronary heart disease, for which he had been off work from September 1997 to February 1998. This was adjudicated by the Office under file number 06-0686865 and was denied. After appellant returned to work, he was granted light duty due to a nonjob-related condition, based on the restrictions of his physician, Dr. George W. Clarke. The instant case was adjudicated by the Office under file number 06-0698129.

In a decision dated March 17, 1999, an Office hearing representative found that, while appellant was required to occasionally lift parcels in excess of 50 pounds, the medical evidence did not establish that this employment factor caused or contributed to his condition.

By letter dated June 29, 1999, appellant, through his attorney, requested reconsideration and submitted additional reports from Dr. Smith. In a report dated December 22, 1998, Dr. Smith stated that he recommended that appellant lift no more than 50 pounds and walk no more than 4 hours per day due to recurrent angina pectoris. He added that it had come to his attention that appellant was working outside these restrictions which could aggravate his condition. In a June 29, 1999 report, Dr. Smith noted that appellant had been under his care for atherosclerotic heart disease, status post numerous interventions. Dr. Smith continued, "I feel [appellant's] cardiac problems were indeed aggravated by his work duties, specifically lifting 50 or more pounds. These were in excess of my previous recommendations."

In a December 4, 1999 decision, the Office denied modification of the prior decisions, noting that the case was a stress claim and not for aggravation of appellant's underlying cardiac condition. The Office found that the medical evidence did not establish that appellant had sustained an emotional condition causally related to factors of employment.

Appellant, through his attorney, again requested reconsideration, asserting that Dr. Smith's medical reports, especially those of March 3, 1998 and June 29, 1999, established that appellant's disabling chest pain was caused by the accepted employment factor of occasional lifting. By decision dated June 20, 2000, the Office denied modification of the prior decisions, finding that the claim was denied because the evidence failed to establish that appellant's condition was caused or aggravated by occasional lifting in excess of 50 pounds. The Office specifically found that Dr. Smith did not mention lifting in his March 3, 1998 report, and that his June 29, 1999 report was speculative.

On June 17, 2001 appellant's attorney again requested reconsideration, arguing that the Office improperly denied the claim and again asserting that Dr. Smith's opinion clearly established that appellant's disabling condition was aggravated by working outside his restrictions. By decision dated January 23, 2002, the Office denied appellant's reconsideration request, finding the argument submitted repetitious and insufficient to warrant merit review. The instant appeal follows.

The Board finds that the Office properly denied appellant's request for reconsideration.

The only decision before the Board in this appeal is the decision of the Office dated January 23, 2002 denying appellant's application for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated June 20, 2000 and the filing of appellant's appeal with the Board on February 7, 2002, the Board lacks jurisdiction to review the merits of his claim.<sup>2</sup>

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented

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<sup>2</sup> 20 C.F.R. § 501.3(d)(2).

evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> 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 on the merits.<sup>5</sup>

In the June 17, 2001 reconsideration request, appellant repeated his contention that the Office erred in denying his claim, arguing that Dr. Smith's opinion established that appellant's condition was aggravated by working outside his restrictions. On appeal to the Board, appellant contended that the Office improperly denied merit review and had developed the case as an emotional condition claim, rather than a physical injury claim.

The Board initially notes that appellant submitted no new evidence with his June 17, 2001 request for reconsideration. The Board finds appellant's argument repetitious. The Office had previously reviewed Dr. Smith's reports, and specifically reviewed those of March 3, 1998 and June 29, 1999 in its decisions dated March 17 and December 4, 1999. Appellant's argument that the Office did not address the physical aspects of his claim for a physical condition is without merit as the Office addressed this aspect of the claim in its decision issued June 20, 2000 when the Office found that the evidence of record failed to establish that appellant's cardiac condition was caused or aggravated by occasional lifting in excess of 50 pounds. The Board finds that, as appellant submitted no new relevant evidence or argument in support of his request for reconsideration, the Office properly denied merit review of his claim.<sup>6</sup>

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<sup>3</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>6</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

The decision of the Office of Workers' Compensation Programs dated January 23, 2002 is hereby affirmed.

Dated, Washington, DC  
October 10, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member