

**United States Department of Labor
Employees' Compensation Appeals Board**

VICTOR A. COFFEY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Patchogue, NY, Employer**

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**Docket No. 04-303
Issued: March 17, 2004**

Appearances:
Victor A. Coffey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 17, 2003 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated November 6, 2003, finding that his request for reconsideration was insufficient to warrant merit review of the claim. The last decision on the merits of appellant's claim for an employment-related emotional condition was dated October 22, 2002. As provided in 20 C.F.R. § 501.3(d)(2), the Board's jurisdiction is limited to Office decisions issued within one year of the filing of the appeal and, therefore, the Board's jurisdiction on this appeal is limited to the November 6, 2003 decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The case was before the Board on two prior appeals. In a decision dated February 19, 1999, the Board affirmed Office decisions dated April 17 and December 13, 1996.¹ The Board found that appellant had not established an emotional condition causally related to compensable work factors. By decision dated July 3, 2002, the Board set aside an August 14, 2001 Office decision on the grounds that appellant had submitted new and relevant evidence and, therefore, was entitled to a merit review of his claim.² The history of the case provided in the Board's prior decisions is incorporated herein by reference.

In a decision dated October 22, 2002, the Office reviewed the case on its merits. The Office determined that an additional compensable factor had been established based on a finding from the Merit Systems Protection Board that the employing establishment improperly required appellant to use annual leave. The Office denied the claim on the grounds that appellant had not submitted sufficient medical evidence to establish an emotional condition causally related to the compensable factors.

In a letter dated November 27, 2002, an Office regional director indicated that appellant had submitted documents to the Secretary of Labor, but the documents did not contain a request to exercise a specific appeal right. Appellant was advised that, if he disagreed with the October 22, 2002 decision, he should exercise his appeal rights.

The record contains a copy of the November 27, 2002 letter, with appellant's handwritten statement that "this is a request for [a] reconsideration" followed by his signature. Appellant also referred to an October 22, 2002 request and stated that he had not been given a fair appeal. The copy in the record transmitted to the Board indicates at the bottom of the page that it was received by the Office on November 27, 2002.³ The record contains additional documents with a received date of December 10, 2002.

By letter dated July 25, 2003, appellant's representative requested reconsideration and submitted additional evidence.

In a decision dated November 6, 2003, the Office reviewed the evidence submitted with the July 25, 2003 reconsideration request and determined that appellant had not submitted sufficient evidence to warrant reopening the claim for merit review. The Office found that appellant had not submitted new and relevant medical evidence.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative)

¹ Docket No. 97-925.

² Docket No. 02-236.

³ There are inconsistencies in the "received date" for some documents in this file; for example a copy of the October 22, 2002 Office decision purports to have a "received date" of July 3, 2002.

who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”⁴

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

The record indicates that the Office sent appellant a November 27, 2002 letter advising him that, if he disagreed with the October 22, 2002 decision, he should exercise his appeal rights. Appellant responded by returning the letter with a handwritten note requesting reconsideration. There is no indication that the letter was either sent or returned by facsimile transmission; the November 27, 2002 date of receipt by the Office, recorded at the bottom of the page, is inconsistent with the mailing of a letter dated November 27, 2002. The record does indicate, however, that the Office received additional evidence on December 10, 2002. A receipt date of December 10, 2002, would be consistent with the mailing and return of a November 27, 2002 letter.

Accordingly, the evidence indicates that, as of December 10, 2002, the Office had received a written request for reconsideration and additional evidence. The decision in this case was dated November 6, 2003. It is well established that when the delay in issuing a reconsideration decision precludes a claimant from exercising his right to appeal a merit decision to the Board, the Office should conduct a merit review.⁷ In the present case, it is apparent that appellant’s opportunity for a merit review of the October 22, 2002 decision, by the Board has

⁴ 20 C.F.R. § 10.605 (1999).

⁵ *Id.* § 10.606.

⁶ *Id.* § 10.608.

⁷ See *Anthony A. DeGenaro*, 44 ECAB 230 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 2002) “(when a reconsideration decision is delayed beyond 90 days and the delay jeopardizes the claimant’s right to review of the merits of the case by the Board, the [Office] should conduct a merit review.)”

been compromised by the Office's delay in issuing its decision. The Board accordingly finds that appellant is entitled to a merit review of his claim in order to protect his appeal rights.

CONCLUSION

The case will be remanded to the Office for a merit review of appellant's claim based on the evidence of record and the issuance of an appropriate decision to protect his appeal rights.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2003 be set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: March 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member