United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL L. KNIGHTEN, Appellant	)	
and	)	**Docket No. 05-859**
	)	**Issued: July 26, 2005**
SMALL BUSINESS ADMINISTRATION, Portland, OR, Employer	)	

Appearances:
Michael L. Knighten, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 2, 2005 appellant filed a timely appeal from a nonmerit Office of Workers' Compensation Programs' decision dated December 20, 2004. Because more than one year has elapsed between the last merit decision dated December 15, 2003 and the filing of this appeal on March 2, 2005, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

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

FACTUAL HISTORY

On September 25, 2002 appellant, a 49-year-old finance chief, filed a Form CA-2 claim for benefits, alleging that his heart condition and psychiatric condition were caused by stress causally related to factors of his federal employment.[1]

By decision dated May 5, 2003, the Office denied appellant's claim on the grounds that it was not timely filed pursuant to section 8122.[2]

On May 16, 2003 appellant requested an oral hearing, which was held on October 23, 2003.

In a report dated July 24, 2003, Dr. Diane R. Tomar, a psychiatrist, stated that appellant had major depressive disorder and post-traumatic stress disorder, and advised that he was so incapacitated, he was barely functional. She stated that appellant slept most of the day due to fatigue and depression.

By decision dated December 15, 2003, an Office hearing representative affirmed the May 5, 2003 Office decision.

By letter dated September 24, 2004, appellant requested reconsideration. Appellant submitted a January 6, 2004 report from Dr. Tomar who reiterated her previous findings and conclusions; a May 14, 2004 affidavit from his wife, Patricia A. Knighten, in which she addressed having to assist her husband in filing and mailing his Form CA-2 claim and attached medical records on June 20 and 25, 2001; and a photocopied manual of mental disorders.

By decision dated December 20, 2004, 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.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), 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.[3] 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.[4]

[1] The record on appeal does not contain the Form CA-2. The date of filing is not contested.

[2] 5 U.S.C. § 8122.

[3] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[4] *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence submitted is not pertinent to the issue on appeal. The January 6, 2004 report from Dr. Tomar restated the diagnoses of major depressive disorder and post-traumatic stress disorder and indicated that appellant was severely incapacitated. However, this report is duplicative and repetitive of her previous report which was considered by the Office in a prior decision. The affidavit from appellant's wife noted only that she assisted appellant in completing and filing his claim and accompanied him to the post office to ensure its delivery. However, this is not relevant to the underlying issue in this case, which was the finding that his claim was not timely filed. The medical literature appellant submitted with his claim did not present any additional evidence pertaining to the relevant issue of whether he filed a timely claim for benefits pursuant to section 8122. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[5] Appellant's reconsideration request 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. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

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 his claim under 5 U.S.C. § 8128(a).

[5] *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: July 26, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board