

before June 19, 1997. Appellant retired from federal employment effective October 3, 1998. He attributed his condition to harassment and discrimination by Supervisor Roy Madden and other management officials due to emotional and physical disabilities, poor interactions with coworkers, the effects of medication on his work efficiency and a “less than ideal work environment (noise level, vulgar language, etc.).” Appellant also alleged that supervisors refused to recognize favorable aspects of his job performance, that he was subject to disproportionate disciplinary actions, that a June 12, 1998 fitness-for-duty examination was a form of harassment and that Mr. Madden unfairly scrutinized his actions. In a March 5, 2001 note, the employing establishment generally denied appellant’s account of events, alleging that he failed to perform his duties in a satisfactory manner.

In support of his claim, appellant submitted reports dated July 1, 1997 to April 20, 1998 from Dr. Paul M. Zusky, an attending Board-certified internist, who attributed a March 1998 decompensation of major depressive disorder and dysthymic disorder to unspecified work stress.

By decision dated June 7, 2001, the Office denied appellant’s claim on the grounds that he failed to establish any compensable factors of employment as he submitted insufficient evidence substantiating his allegations of harassment and discrimination. The Office further found that appellant failed to establish administrative error or abuse regarding disciplinary actions, excessive supervision and lack of positive feedback.

Appellant then requested an oral hearing, held November 1, 2001. At the hearing, he newly alleged that he was overworked due to increased mail volume on his delivery route. Following the hearing, he submitted documents relating to grievances he filed in 1997 regarding 1996 and 1997 disciplinary actions by Mr. Madden. These documents do not contain any finding or admission of wrongdoing by the employing establishment. Appellant also submitted October 2001 statements from several coworkers indicating that Mr. Madden scrutinized appellant’s performance and singled him out for disciplinary action but did not mention any specific incidents. Appellant also submitted additional medical evidence.

In response to the hearing transcript, Mr. Madden submitted a November 19, 2001 statement generally denying appellant’s allegations. He asserted that the disciplinary actions imposed resulted from appellant’s many infractions, including leaving his work assignment to socialize with other carriers and being late in leaving for his delivery route.

By decision dated and finalized February 19, 2002, the Office hearing representative affirmed the June 7, 2001 decision. The hearing representative found that appellant did not submit sufficient factual evidence to establish his allegations of harassment and discrimination as factual. The hearing representative further found that appellant did not submit evidence demonstrating that the letters of warning were in any way erroneous or abusive. The Office further found that appellant had not established his allegations regarding noise exposure as factual.

Appellant requested reconsideration by letter dated February 17, 2003. He submitted a February 11, 2003 psychologist’s report, time keeping records from 1996 and 1997 and a

February 16, 2003 statement.² In his February 16, 2003 statement, appellant asserted that his requests for work accommodations proved that his supervisors erred in performing their duties, that his coworkers' statement were sufficient to establish compensable employment factors, that time keeping records established that he completed his duties in a timely manner, that he felt his world was "unraveling" at work and that his workstation was constantly noisy.

By decision dated March 18, 2003, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision as it failed to establish any compensable employment factors.

Appellant requested reconsideration by letter dated March 10, 2004. He submitted a February 12, 2004 report from Dr. Michael Braverman, an attending Board-certified psychiatrist, diagnosing recurrent major depression with a decompensation in October 1998, "directly causally related to the series of stressors he experienced at work."

By decision dated May 27, 2004, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant such modification as it did not establish any compensable factors of employment.

In a May 3, 2005 letter, appellant requested reconsideration. He asserted that he had "additional evidence not previously considered" and that he was waiting for legal and medical documents. Appellant explained that there had "been a delay" due to "some medical problems affecting timely responses." He did not submit additional evidence prior to the issuance of the Office's May 20, 2005 decision.

By decision dated May 20, 2005, the Office denied appellant's request for a merit review on the grounds that his May 3, 2005 letter, the only evidence submitted, "neither raised substantive legal questions nor included new and relevant evidence."

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section

² He also submitted copies of March 1, 2002 letters, previously of record and considered by the Office prior to issuance of the February 19, 2002 decision.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2) (2003).

10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of his request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ Appellant need only submit relevant, pertinent evidence not previously considered by the Office.⁷ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards sets forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

The Office denied appellant's emotional condition claim by decision dated June 7, 2001, affirmed by decisions dated February 19, 2002, March 18, 2003 and May 27, 2004, finding that he submitted insufficient evidence to establish any compensable factor of employment. Appellant then requested reconsideration by May 3, 2005 letter, asserting that he would submit new medical evidence and legal arguments. However, appellant did not submit any additional evidence prior to the issuance of the May 20, 2004 decision.

The critical issue at the time of the last merit decision in the case was whether appellant established any compensable factors of employment. To be relevant, the evidence submitted in support of the May 3, 2005 request for reconsideration must address that issue. Appellant's letter is insufficient to corroborate his allegations. Therefore, it is irrelevant to the claim. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.⁹

Thus, appellant has not established that the Office improperly refused to reopen his claim for a review of the merits under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(b) (2003).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁷ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB ____ (Docket No. 03-335, issued August 26, 2003).

⁹ *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2005 is affirmed.

Issued: October 25, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board