

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

DAVID B. GRIGGS, Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF LAND MANAGEMENT, Reno, NV,
Employer**

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**Docket No. 06-374
Issued: April 7, 2006**

Appearances:
David B. Griggs, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal of a September 20, 2005 decision of the Office of Workers' Compensation Programs denying merit review of his claim. Pursuant to 20 C.F.R. § 501.3(d)(2), the Board's jurisdiction is limited to decisions issued within one year of the filing of the appeal, and the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly refused to reopen the claim for further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 9, 2001 appellant filed a claim alleging that his November 5, 2001 heart attack was causally related to his federal employment. Appellant indicated that he had been instructed to move his office despite a request to delay the move because of a back condition. He also alleged that on November 5, 2001 Theresa Coleman, a supervisor, spoke to him in an

elevated and derogatory voice regarding his absence from a meeting. Appellant alleged that his heart attack was the result of stress brought on by the inappropriate actions of his supervisor, such as having his credit card purchases audited and criticizing his work.

By decision dated May 2, 2002, the Office denied the claim, finding that appellant had not established a compensable work factor with respect to his allegations. In a letter received on May 1, 2003, appellant requested reconsideration of his claim and submitted additional evidence. The Office reviewed the case on its merits and denied modification by decision dated July 30, 2003. The Office found that appellant had not established error or abuse in an administrative matter or any compensable work factor.

On July 29, 2004 the Office received a July 22, 2004 letter requesting reconsideration. Appellant reiterated his belief that his November 5, 2001 heart attack was caused by the actions of Ms. Coleman. He submitted news articles discussing the relationship between stress and heart disease, as well as evidence previously of record. With respect to new medical evidence, appellant submitted a report dated July 19, 2004 from Dr. Cynthia Brown, a family practitioner. She agreed that tremendous stress at work could lead to a myocardial infarction and subsequent complications.

By decision dated September 20, 2005, the Office denied the request for reconsideration as the evidence was insufficient to warrant further merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."² Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

The Office did not accept that appellant had substantiated a compensable work factor with respect to his claim for an employment-related heart attack. Before the medical evidence is considered, appellant must establish a compensable work factor.⁴ In order to require the

¹ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

⁴ *See* Margaret S. Krzycki, 43 ECAB 496 (1992).

reopening of the claim for merit review, appellant must meet one of the requirements of section 10.606(b)(2). With regard to the new evidence submitted on reconsideration, there is no evidence that is relevant and pertinent to the issue of a compensable work factor.⁵ The articles submitted regarding stress and heart disease are not relevant to the specific allegations in this case.⁶ The medical evidence from Dr. Brown does not provide relevant evidence regarding a compensable work factor. The Board also notes that it would be of limited probative value as a medical report since it did not provide a complete background or a reasoned medical opinion. The Board finds that appellant did not submit evidence that was new and relevant to the issue presented.

On reconsideration appellant reiterated his belief that his heart attack was the result of his supervisor speaking to him in an elevated tone and using demeaning language. He did not, however, show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered. Appellant did not meet any of the requirements of section 10.606(b)(2) in this case. Accordingly, the Office properly declined to reopen the case for a review of the merits of the claim.

CONCLUSION

Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and therefore the Office properly denied the claim without review of the merits.

⁵ Although appellant submitted evidence on appeal, the only evidence that the Board may review is evidence that was before the Office at the time of the final decision on appeal. 20 C.F.R. § 501.2(c).

⁶ The Board also notes that they are of no probative medical value. Newspaper articles, medical texts and excerpts from publications are of no evidentiary value on the issue of causal relationship as they are of general application and are not probative as to whether specific conditions were the result of particular circumstances of the employment. *Eugene Van Dyk*, 53 ECAB 706 (2002).

ORDER

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

Issued: April 7, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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