

¹ 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

The case was before the Board on a prior appeal.² By decision dated July 12, 2001, the Board affirmed an August 20, 1998 wage-earning capacity determination based on the selected position of automobile salesperson. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

Appellant requested reconsideration and the Office denied modification of the wage-earning capacity determination in a decision dated March 12, 2002. The Office again reviewed the merits and denied modification by decision dated December 23, 2002. Appellant requested reconsideration on December 22, 2003 and argued that the Office had failed to consider his post-traumatic stress disorder (PTSD) in determining wage-earning capacity, and that PTSD should be considered an employment-related consequential injury.³ By merit decision dated April 27, 2004, the Office denied modification.

On March 9, 2005 appellant again requested reconsideration and the evidence submitted included a February 22, 2005 report from Dr. H. Ezell Branham, Jr., a psychiatrist, who stated that appellant had PTSD, that February 3, 1995 was appellant's "psychological impairment date" and it prevented him from working in a position dealing with the public. By merit decision dated July 5, 2005, the Office denied modification.

In a letter dated July 3, 2006, appellant again requested reconsideration. He stated that the loss of wage-earning determination was in error because appellant's preexisting psychological impairments prevented him from performing the automobile sales job. Appellant also stated that Dr. Branham's report was sufficient to require further development on the issue of causal relationship. He submitted a brief report from Dr. Branham dated February 22, 2006 stating that he had chronic PTSD related to military service.

By decision dated July 12, 2006, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

² Docket No. 99-1799 (issued July 12, 2001).

³ The accepted conditions are bilateral mild distal peripheral neuropathy and left mild sensory ulnar neuropathy.

Under 20 C.F.R. § 10.606(b)(2), 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 constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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

ANALYSIS

The Office issued a wage-earning capacity determination on August 28, 1998 based on the selected position of automobile salesperson. The Board affirmed the decision on July 12, 2001. To reopen the case for merit review, which in this case would evaluate modification of the wage-earning capacity determination, appellant must meet one of the requirements of section 10.606(b)(2). In appellant's request for reconsideration, he argued that the original wage-earning capacity determination was in error because the Office failed to consider the diagnosis of PTSD in considering wage-earning capacity. This argument was previously raised and considered by the Office in a merit decision which evaluated appellant's request for modification of the wage-earning capacity determination and therefore it does not constitute a new and relevant legal argument. In addition, the argument that PTSD should be accepted as a consequential injury was previously raised and considered by the Office in the evaluation of appellant's request for modification of the wage-earning capacity determination. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered.

With respect to relevant and pertinent new evidence not previously considered, appellant failed to meet this requirement. The February 22, 2006 report from Dr. Branham, for example, briefly stated that appellant had PTSD. He did not provide any pertinent new and relevant evidence with respect to the issue of whether the original wage-earning capacity determination was erroneous.

The Board accordingly finds that appellant did not meet any of the requirements of section 10.606(b)(2). He therefore is not entitled to a merit review in this case.

CONCLUSION

Appellant was not entitled to a merit review since he did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

⁴ *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2006 is affirmed.

Issued: May 31, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board