

)	
R.P., Appellant)	
)	
and)	Docket No. 11-5
)	Issued: July 14, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Petersburg, FL, Employer)	
)	

Case Submitted on the Record

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

On September 29, 2010 appellant filed a timely appeal from a July 7, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than 180 days elapsed between the most recent OWCP merit decision dated February 16, 2010 and the filing of this appeal, pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision and lacks jurisdiction to review the merits of the case.

The issue is whether OWCP properly declined to reopen appellant's case for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 1, 2009 appellant, then a 51-year-old supervisor customer service, filed a traumatic injury claim alleging that on November 24, 2009 he sustained depression and anxiety as a result of being denied access to the Time and Attendance Collection System (TACS) based on a false accusation. He also alleged that for the past 15 months he had been falsely accused of saying and doing things by the employing establishment.

In support of his claim, appellant submitted a December 1, 2009 report from, Suzanne Johnson, a registered nurse, indicating treatment for adjustment disorder with depressed and anxious mood.

By letter dated December 15, 2009, OWCP informed appellant that the evidence of record was insufficient to support his claim and he was advised as to the medical and factual evidence required to establish his claim. Appellant was given 30 days to provide the requested information. No information was received from him.

In a December 16, 2009 statement, Ernest H. Proto, manager, customer service, controverted appellant's claim. He stated that on October 31, 2009 appellant falsified a part-time flexible carrier's clock rings. An investigation was conducted on November 17, 2009 when appellant admitted to inputting the incorrect clock rings, but provided no reason for doing this. On November 24, 2009 Mr. Proto informed appellant that his access to TACS was temporarily suspended pending a resolution of this issue.

By decision dated February 16, 2010, OWCP denied appellant's claim. It found that he failed to submit any medical or factual evidence supporting his claim.

On May 19, 2010 appellant requested reconsideration and submitted evidence in support of his claim.

In a December 10, 2009 certification of disability for the Family and Medical Leave Act, Ms. Johnson indicated that appellant was disabled for the period November 26 to December 7, 2009 as a result of his depression and anxiety.

In a January 7, 2010 report, Ms. Johnson noted that appellant was seen on November 26, 2009 and treated for adjustment disorder with depression and anxious mood. She indicated that appellant could return to work on January 19, 2010.

On December 10, 2009 Dr. George Lowry, an attending psychiatrist, diagnosed adjustment disorder with depression and anxious mood and released appellant to work effective December 7, 2009.

In a May 21, 2010 report, Dr. Lowry and Ms. Johnson reported appellant had been receiving treatment for adjustment disorder with depression and anxious mood since November 26, 2009. Appellant related that on November 24, 2009 he was subjected to a disciplinary action pending an investigation into actions he was falsely accused of doing and that he subsequently suffered a panic attack as a result.

By decision dated July 7, 2010, OWCP denied reconsideration of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

Appellant's May 19, 2010 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted a December 10, 2009 certification of disability for the Family and Medical Leave Act and reports from Ms. Johnson and Dr. Lowry. OWCP is not required to consider medical evidence in an emotional condition case where no work factors have been established.⁸ The medical evidence submitted by appellant is not relevant to the underlying issue in this case, which is the factual question of

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁵ 20 C.F.R. § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁸ See *L.C.*, 58 ECAB 493 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

whether appellant has established a compensable factor of employment. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advancing a relevant legal argument not previously considered; or constituting relevant and new pertinent evidence not considered previously by OWCP. As appellant did not meet any of the necessary regulatory requirements, the Board finds that his claim is not entitled to further merit review.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2010 is affirmed.

Issued: July 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

⁹ *R.M.*, 59 ECAB 690 (2008); *Patricia G. Aiken*, 57 ECAB 441 (2006).

¹⁰ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, *supra* note 8.