

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE S. HAMILTON and DEPARTMENT OF THE TREASURY,
CUSTOMS SERVICE, El Paso, TX

*Docket No. 99-1602; Submitted on the Record;
Issued December 19, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed his appeal with the Board on May 13, 1999, the only decision properly before the Board is the Office's February 9, 1999 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's January 27, 1998 or December 10, 1996 decisions denying his claim for an emotional condition.²

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ 20 C.F.R. § 10.606(b)(2) (1999).

⁴ 20 C.F.R. § 10.608(b) (1999).

On August 8, 1997 appellant, then a 39-year-old senior customs inspector, filed an occupational disease claim alleging that he sustained an emotional condition causally related to factors of his employment.⁵ By decisions dated December 10, 1996 and January 27, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an emotional condition causally related to compensable factors of employment. By letter dated January 20, 1999, appellant requested reconsideration. By decision dated February 9, 1999, the Office denied appellant's request for reconsideration.

In support of his January 20, 1999 request for reconsideration, appellant submitted a letter dated February 22, 1996 from Arthur Pitts. This letter was previously of record. Therefore it does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant submitted two letters from his health insurer, which did not address the employment factors, alleged to have caused his emotional condition and therefore these letters do not constitute relevant and pertinent evidence not previously considered by the Office. Appellant submitted a statement from David Austin, Deputy Chief of Staff for his congressman. In his statement, Mr. Austin noted that he had assisted appellant regarding his grievances against the employing establishment but he did not indicate that he had any personal knowledge of the employment factors alleged by appellant to have caused his emotional condition. Therefore this statement does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant submitted a statement from Jose Gonzalez who had assisted him with his Equal Employment Opportunity Commission complaint. Mr. Gonzalez discussed in general terms appellant's problems with personnel and administrative actions of the employing establishment and stated his opinion that it had committed errors in the handling of these matters but he did not provide any details regarding the alleged errors. Therefore this statement does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant submitted a letter dated February 5, 1996 in which Mr. Pitts directed him to report for a fitness-for-duty medical examination. This letter does not address appellant's allegations and therefore it does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant submitted an August 14, 1996 letter from the employing establishment, which does not address the allegations, alleged to have caused his emotional condition. Therefore, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted statements dated April and December 31, 1998 and January 20, 1999 in which he related his allegations concerning the employing establishment. Most of the employment factors addressed in his statements were previously considered by the Office and do not constitute relevant and pertinent evidence not previously considered by the Office. Appellant mentioned one new allegation in his statements, that the employing establishment mishandled his performance evaluations. However, this allegation concerns an administrative matter and administrative or personnel matters are not compensable factors under the Federal Employees' Compensation Act absent evidence of error or abuse. Appellant did not provide

⁵ Appellant also filed a claim for an emotional condition on July 29, 1996. The case records for these two claims were consolidated in 1997.

such evidence of error or abuse.⁶ Therefore, this allegation does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office did not abuse its discretion in denying his request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated February 9, 1999 is affirmed.

Dated, Washington, DC
December 19, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ See *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).