

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ROBERT B. CLEVELAND and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, San Diego, CA

*Docket No. 99-2310; Submitted on the Record;  
Issued December 11, 2000*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of his employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized November 30, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Subsequently, appellant requested reconsideration by letter dated February 7, 1999 and submitted additional evidence. By decision dated May 24, 1999, the Office denied appellant's request for reconsideration.

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of his 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.<sup>1</sup> 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.<sup>2</sup>

---

<sup>1</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>2</sup> 20 C.F.R. § 10.608(b) (1999).

In support of his February 7, 1999 request for reconsideration, appellant submitted a statement from Stanley Wicks, a supervisor, who stated his opinion that appellant was a “dedicated, cheerful and hardworking individual who performs all duties in an accurate and enthusiastic manner.” This statement does not address the issue of whether appellant sustained an emotional condition causally related to compensable factors of employment, and thus does not constitute relevant and pertinent evidence not previously considered by the Office and is not sufficient to require the Office to reconsider the merits of appellant’s claim.

Appellant also submitted a document titled “Questions Asked and Answered” dated March 30, 1999 and his written statement describing work incidents on March 24, 25 and 30, 1999. The first document contains questions posed by appellant to a foreman and work leader regarding work incidents on March 29 and 30, 1999. The record shows that appellant’s emotional condition claim alleged that incidents occurring in 1996 caused his condition. This document does not address the 1996 work incidents which were the subject of the Office’s prior merit decisions and thus does not constitute relevant and pertinent evidence not previously considered by the Office. Therefore, this evidence is not sufficient to require further merit review 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 properly denied his request for reconsideration.

The decisions of the Office of Workers’ Compensation Programs dated May 24, 1999 and November 30, 1998 are affirmed.

Dated, Washington, DC  
December 11, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member