

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL HAMM and U.S. POSTAL SERVICE,  
POST OFFICE, South Gate, Calif.

*Docket No. 97-2679; Submitted on the Record;  
Issued June 22, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to require reopening the claim for merit review under 5 U.S.C. § 8128(a).

In the present case, appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained a stress condition in the performance of duty on November 1, 1995. In a decision dated December 28, 1995, the Office denied the claim on the grounds that appellant had not submitted sufficient medical evidence to establish an injury causally related to a November 1, 1995 employment incident. By decision dated February 9, 1996, the Office modified the decision to reflect that appellant's reaction to the November 1, 1995 incident was self-generated and therefore not compensable.<sup>1</sup> In a decision dated June 28, 1996, the Office reviewed the case on its merits and denied modification.

In a letter dated June 23, 1997, appellant requested reconsideration of his claim and submitted police reports regarding incidents on October 1, 1994 and November 1, 1995. By decision dated August 8, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant reopening the claim for merit review.<sup>2</sup>

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<sup>1</sup> Appellant had alleged that, while in the performance of duty on November 1, 1995, he had been followed by two individuals whom appellant felt were going to attempt a robbery against him and the contents of the employing establishment vehicle.

<sup>2</sup> A nonmerit review is a limited review to determine if the evidence is sufficient under 20 C.F.R. § 10.138(b)(1) to reopen the case for merit review, and the only right of appeal is to the Board. A merit review is a determination, pursuant to the discretionary authority granted by 5 U.S.C. § 8128(a), of whether the evidence is sufficient to modify the prior decision, and appeal rights include a one-year period to request reconsideration or appeal to the Board; *see* 20 C.F.R § 10.138; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7-8 (June 1997).

With regard to the present appeal, the only decision over which the Board has jurisdiction is the August 8, 1997 Office decision.<sup>3</sup>

The Board has reviewed the record and finds that the Office properly determined that appellant's request for reconsideration was insufficient to require reopening the claim for merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's 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 point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.<sup>6</sup>

In this case, appellant did not offer any legal arguments, but submitted police reports regarding incidents on November 1, 1995 and October 1, 1994. The November 1, 1995 police report was previously of record, and therefore is not considered new evidence. The October 1, 1994 police report does represent new factual evidence, but the Board finds that it does not provide new and relevant information to the claim filed. Appellant's claim was for a traumatic injury on November 1, 1995; it is well established that a traumatic injury is an injury caused by incidents within a single workday or shift.<sup>7</sup> The claim was developed as a traumatic injury claim and the Office decisions are limited to this issue. The events of October 1, 1994 would be relevant only to the extent that they could be found to have impacted on appellant's reaction to the November 1, 1995 incident.<sup>8</sup> The Board notes that medical evidence previously submitted did discuss an October 1994 incident, and appellant provided a statement as to the incident that was received by the Office on May 3, 1996. The police report submitted on reconsideration does not provide any new information relevant to the claim for injury on November 1, 1995.

Accordingly, the Board finds that none of the requirements of section 10.138(b)(1) have been met in this case, and the Office properly denied the request for reconsideration without reopening the case for merit review.

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<sup>3</sup> The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal. 20 C.F.R. § 501.3(d). Appellant filed his appeal with the Board on August 19, 1997.

<sup>4</sup> 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)."

<sup>5</sup> 20 C.F.R. § 10.138(b)(1).

<sup>6</sup> 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>7</sup> 20 C.F.R. § 10.5(15).

<sup>8</sup> The October 1, 1994 incident involved a robbery attempt on appellant while in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated August 8, 1997 is affirmed.

Dated, Washington, D.C.  
June 22, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member