

**United States Department of Labor
Employees' Compensation Appeals Board**

MICHAEL P. BATTLE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bell, CA, Employer**

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**Docket No. 04-1391
Issued: October 8, 2004**

Appearances:
Michael P. Battle, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On May 3, 2004 appellant filed a timely appeal from the April 22, 2004 nonmerit decision of the Office of Workers' Compensation Programs, which denied his March 29, 2004 request for reconsideration. The Board has jurisdiction to review the Office's decision not to reopen appellant's case for a merit review.¹

ISSUE

The issue is whether the Office properly denied appellant's March 29, 2004 request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c), 501.3.

FACTUAL HISTORY

On the last appeal of this case,² the Board found that appellant failed to establish that he sustained an emotional condition causally related to factors of his federal employment. The Board noted that he submitted no evidence to prove that a coworker accused him of murder, that other coworkers shunned him and called him a murderer, that management did not respond appropriately to his complaint or that management erred or acted abusively in taking various disciplinary actions against him. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

In a letter dated March 29, 2004, appellant requested reconsideration. He submitted a March 29, 2004 report from Dr. Stephen Read, a psychiatrist, who reported that appellant's emotional condition was adversely affected by accusations in his workplace: "In my opinion it is more probable than not that [appellant's] condition has been adversely affected by these workplace-related events, that his claim therefore has merit, and he should be allowed full review, and if appropriate, redress should be available to him."

In a decision dated April 22, 2004, the Office denied appellant's request for reconsideration. The Office found that he submitted no new and relevant evidence or argument to warrant a merit review of his case.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.³ The employee shall exercise this right through a request to the District Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁴

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the

² Docket No. 03-861 (issued July 24, 2003).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.605 (1999).

⁵ *Id.* at § 10.606.

request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Appellant had one year from the Board's July 24, 2003 decision on the merits of his case to file a timely request for reconsideration.⁷ So his March 29, 2004 request for reconsideration was timely. The question is whether his request met one of the three standards for obtaining a merit review.

Appellant made no attempt to show that the Office erroneously applied or interpreted a specific point of law, and he advanced no relevant legal argument not previously considered by the Office. Instead, he submitted new medical evidence, a March 29, 2004 report from Dr. Read. This evidence does not satisfy the third standard described above because the report is not relevant and pertinent to the denial of his claim. On the last appeal the Board explained the reason appellant's claim for compensation failed: he submitted no proof to substantiate the allegations he made against the coworker in question, against his coworkers in general or against his superiors. Without evidence showing that the events occurred as alleged or that his superiors committed error in an administrative matter, his claim had no basis in fact. The deficiency was factual and required factual evidence -- first-hand accounts from witnesses, perhaps, who heard the coworker charge him with murder or who could testify to the alleged shunning, a finding from the Merit Systems Protection Board that the employing establishment's disciplinary actions were unwarranted. The Board's decision did not turn on the medical evidence. Indeed, because appellant did not establish as factual any compensable factor of employment, it would have been premature to consider a doctor's opinion on whether there was a causal relationship between any compensable factor of employment and appellant's diagnosed emotional condition. Dr. Read reported that appellant's emotional condition was adversely affected by accusations in his workplace, but this is not an issue where the accusations have yet to be established as factual. Because the medical evidence submitted in support of appellant's request for reconsideration is irrelevant to the grounds upon which the Office denied his claim, it does not warrant a merit review of his case under the third standard above.

CONCLUSION

The Board finds that the Office properly denied appellant's March 29, 2004 request for reconsideration. Appellant's request was timely but failed to meet at least one of three standards for obtaining a merit review of his case.

⁶ *Id.* at § 10.608.

⁷ A right to reconsideration within one year accompanies any merit decision by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (January 2004).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member