

avoided on the alternate shift.” Appellant related that during 8 days with 10-hour shifts he was subjected to numerous complaints about the alternate air conditioning mechanic with whom he shared shifts. He alleged the “constant complaining of lack of service on the alternate shift” overwhelmed him due to “increased work issues” and it was “psychologically detrimental.”

In a letter dated April 7, 2003, the Office informed appellant that the evidence of record was insufficient to support his emotional condition claim and advised him regarding the factual and medical evidence required to sustain his claim.

In an attending physician’s report (Form CA-20), Dr. George L. Franklin, an osteopathic treating Board-certified family practitioner, diagnosed anxiety due to recent changes at work.

By decision dated July 29, 2003, the Office denied appellant’s emotional condition claim on the grounds that he failed to establish any compensable factor of employment. The Office also found that the record contained insufficient medical evidence.

Appellant requested reconsideration in a letter dated January 13, 2004 and submitted medical and factual evidence in support of his request, including a July 10, 2003 statement from Terry Berkheimer regarding Robert Clark, the alternate shift mechanic. In a September 16, 2003 statement, Mr. Berkheimer addressed a September 8, 2003 incident, in which he sent appellant to troubleshoot galley equipment since Mr. Clark did not have the necessary experience. Mr. Berkheimer also sent appellant “on other jobs that Mr. Clark had previously worked on when the customer has asked” due to a lack of confidence in Mr. Clark’s ability. An undated email addressed the inability of the weekend shift person to resolve problems by Mr. Berkheimer. In a September 10, 2003 statement, Randy Keatts, Electric Power Controller leader commented upon Mr. Clark’s inability to perform his duties. In a September 25, 2003 statement, Lito Mabini, assistant manager addressed an April 22, 2003 incident with Mr. Clark and his lack of regard for the safety of others. An August 22, 2003 email from Edward E. Pinaula regarded an April 22, 2003 incident with Mr. Clark, who he alleged disregarded safety measures. An August 18, 2003 report by D. Bendle, operations assistant, stated a Mr. Mabini did not report a problem over the weekend because he preferred appellant to do the job rather than Mr. Clark. In a May 5, 2003 email, Timothy E. Burke noted the loss of plumbing and air conditioning support on the weekends by the change in appellant’s schedule. In an August 22, 2003 statement, Lamberto M. Escobar, facility manager, requested appellant as his maintenance person. An undated statement from Scott W. Davis, supervisor, noted Mr. Clark’s inability to “perform unsupervised” and that appellant was switched to an eight-hour, five-day work schedule. An April 2, 2003 memoranda from Ginger Strouse, Tenant Liason, addressed Mr. Clark’s limitations.

In a September 25, 2003 report, Dr. Franklin listed appellant’s medication and his ability to perform his duties. On October 10, 2003 Dr. Bapu C. Aluri diagnosed headaches and anxiety. He stated that it appeared “that the affect of the change in his work schedule to accommodate his coworker has significantly impaired his work, social and emotional well being.”

In a decision dated February 10, 2004, the Office denied modification of the July 29, 2003 decision.

In a letter dated January 2, 2005, appellant requested reconsideration of the denial of his claim and provided arguments as to errors in the February 10, 2004 decision. He contended that the Office improperly analyzed the evidence regarding the removal of Mr. Clark and the increase in his workload due to the inability of his coworker to perform his job. Appellant contended that Mr. Clark's acceptance of another position supported allegations that he was incompetent, which caused an increase in appellant's workload. Appellant also contended that the Office improperly failed to consider the medical evidence.

By decision dated January 26, 2005, the Office denied appellant's request for reconsideration, finding that he failed to establish an erroneous application or interpretation of the law or advance a point of law not previously considered.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.²

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.³ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁵

ANALYSIS

Appellant's January 2, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. In response to appellant's allegation that the Office had improperly analyzed the factual evidence, it found his contention to be without merit. The Office found that the factual evidence considered in the prior decision was insufficient to establish that appellant's workload had increased as there was

¹ 5 U.S.C. § 8128(a) (“[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”).

² *Jeffrey M. Sagrecy*, 55 ECAB ___ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ *Annette Louise*, 54 ECAB ___ (Docket No. 03-335, issued August 26, 2003).

no specific information regarding the date and duties or periods of time or that appellant was unable to perform his assigned duties. Furthermore, the Office found that the statements submitted by appellant did not substantiate his allegation that he was overworked and noted that incidents which occurred subsequent to the filing of his claim could not be considered. Additionally, he did not advance a relevant legal argument not previously considered by the Office. 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).⁶

Appellant also failed to satisfy the third requirement under section 10.606(b)(2).⁷ The issue on reconsideration was whether he established a compensable factor of employment thereby establishing that he sustained an emotional condition in the performance of duty. Appellant did not submit any additional factual information with his January 2, 2005 request for reconsideration. He merely reiterated his contentions regarding the inability of his coworker to perform his duties which resulted in an increased workload for appellant. Consequently, because appellant did not submit any relevant and pertinent new evidence, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).⁸

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied the January 2, 2004 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. §§ 10.606(b)(2)(i) and (ii).

⁷ 20 C.F.R. § 10.606(b)(2)(iii).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2005 is affirmed.

Issued: August 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board