

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

ANGEL L. MERCADO, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, San Juan, PR, Employer**

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**Docket No. 05-605
Issued: July 5, 2005**

Appearances:

*Michael Trias Fraticelli, Esq., for the appellant
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 January 13, 2005 appellant, through his attorney, filed a timely appeal from the October 26, 2004 nonmerit decision of the Office of Workers' Compensation Programs, denying his request for a merit review of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Board's August 28, 2003 decision which affirmed a decision of an Office hearing representative dated November 21, 2002. The Board's August 28, 2003 decision became final upon the expiration of 30 days from the date of the filing of the order.¹ The matters adjudicated in the Board's August 28, 2003 decision are *re judicata* and are not subject to further consideration by the Board on this appeal.²

¹ 20 C.F.R. § 501.6(d). Although appellant filed a petition for reconsideration of the Board's August 28, 2003 decision, pursuant to 20 C.F.R. § 501.7(a), the Board denied the petition for reconsideration by an order dated December 8, 2003. *Order Denying Petition for Reconsideration*, Docket No. 03-904 (issued December 8, 2003).

² *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998); *Hugo A. Mentink*, 9 ECAB 628 (1958).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has twice been before the Board on appeal. To summarize, on September 3, 1998 appellant, then a 44-year-old technician, filed an occupational disease claim alleging that his major depression with psychotic symptoms and paranoid traits were caused or aggravated by his federal employment. He filed another occupational disease claim on September 3, 1998 alleging that on July 1, 1994 he first realized that his hypertension was aggravated by stressful conditions and harassment in the workplace.

By decision dated May 14, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. In a July 23, 1999 decision, the Office denied his claim for hypertension as he failed to establish that his conditions were causally related to his federal employment. In letters dated June 14 and August 5, 1999, appellant requested an oral hearing before an Office hearing representative regarding the Office's May 14 and July 23, 1999 decisions.

In a May 15, 2000 decision, a hearing representative affirmed the Office's decisions, finding that appellant failed to establish that his claimed emotional condition and hypertension arose in the performance of duty. On August 15, 2000 appellant appealed to the Board.

Appellant appealed to the Board on October 3, 2000, which was assigned Docket No. 00-2668. By order dated June 14, 2001, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record to be followed by a *de novo* decision.³ On remand the Office issued an August 9, 2001 decision, finding that appellant failed to establish that his emotional condition and hypertension were caused by compensable factors of his federal employment. He requested an oral hearing before an Office hearing representative on August 28, 2001.

By decision dated November 21, 2002, a hearing representative affirmed the Office's August 9, 2001 decision. On February 14, 2003 appellant appealed to the Board, which was assigned Docket No. 03-904.

In a decision dated August 28, 2003, the Board affirmed the Office hearing representative's November 21, 2002 decision and found that appellant failed to establish that he sustained an emotional condition or an aggravation of his hypertension while in the performance of duty. The Board found that he failed to establish that his conditions were causally related to compensable factors of his federal employment.⁴ On April 23, 2004 appellant, through his attorney, filed a petition for reconsideration. He submitted an October 23, 2002 medical report

³ Docket No. 00-2688 (issued June 14, 2001).

⁴ Docket No. 03-904 (issued August 28, 2003).

of Dr. Roberto Coira, a psychiatrist, which provided a history that, after he began working for the employing establishment on January 16, 1990, his long-standing emotional condition worsened with severe mental limitations due to increased pressure at work and problems with his supervisors and coworkers. Dr. Coira reported his findings on mental examination and diagnosed recurrent major depression with psychotic features on Axis 1, hypertension and diabetes on Axis 3, severe on Axis 4 and a global assessment of function of 40 on Axis 5. He indicated that there was no diagnosis on Axis 2. Dr. Coira noted appellant's medications and stated that his prognosis was poor because he failed several anti-depressant and neuroleptics trials. He stated that even though appellant had a long-standing history of mental illness, he managed to continue working at different jobs and sites for many years until he started experiencing problems while working for the employing establishment. Dr. Coira identified increased pressure at work as the only stressor and opined that his depression became chronic and his symptoms markedly deteriorated while working during the mid 1990s.

In a September 22, 2003 report, Dr. Coira noted that appellant continued to experience exacerbations of his emotional condition and reported his findings on examination. He reiterated that appellant had recurrent major depression with psychotic features on Axis 1, hypertension and diabetes on Axis 3, severe on Axis 4, a global assessment of function of 40 on Axis 5 and no diagnosis on Axis 2. Dr. Coira also reiterated that appellant's prognosis was poor due to his poor response to treatment. He concluded that his prognosis was the reason why he was unable to handle work-related stress.

Appellant submitted Dr. Coira's March 19, 2004 medical report, in which he reiterated that appellant continued to experience exacerbations of his emotional condition, that he suffered from recurrent major depression with psychotic features on Axis 1, hypertension and diabetes on Axis 3, severe on Axis 4, a global assessment of function of 40 on Axis 5 and no diagnosis on Axis 2. He also reiterated that appellant's prognosis was poor. Dr. Coira opined that his physical condition had directly influenced his emotional condition to the point that appellant was disabled from work and unable to tolerate job-related stress.

In an order dated December 8, 2003, the Board denied appellant's petition for reconsideration on the grounds that he failed to establish any error of fact or law warranting further consideration by the Board.⁵ On June 19, 2004 appellant, through his attorney, requested "reconsideration" before the Board. He submitted duplicate copies of Dr. Coira's October 23, 2002, September 22, 2003 and March 19, 2004 reports.

Appellant's case was transferred to the Office who issued a decision on October 26, 2004. In this decision, the Office noted that since the Board will not review new evidence not previously considered by the Office, his attorney actually requested reconsideration before the Office as he submitted new medical evidence in support of the April 23 and June 19, 2004 petitions. The Office further noted that appellant's attorney could not have been requesting

⁵ *Order Denying Petition for Reconsideration*, Docket No. 03-904 (issued December 8, 2003). In response to appellant's attorney's statement that he was not seeking reconsideration of the Board's August 28, 2003 decision but, rather, an appeal of the decision to exhaust all administrative remedies to proceed in federal court if necessary, the Board stated, in its December 8, 2003 order, that pursuant to 20 C.F.R. § 501.6(c) its decisions are final as to the subject matter appealed.

reconsideration of the Board's December 8, 2003 order as it must be filed within 30 days from the date of the order. The Office found that Dr. Coira's medical reports were immaterial in nature as appellant had not previously established that his emotional condition and hypertension were caused by compensable factors of his employment and, thus, insufficient to warrant a review of the prior decisions.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁶ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

The relevant issue in this case is whether appellant has established that his claimed conditions were causally related to compensable factors of his federal employment.

In support of his request, appellant submitted Dr. Coira's October 23, 2002 report in which he advised that appellant suffered from major depression with psychotic features, hypertension and diabetes, that his prognosis was poor and that appellant was totally disabled for work. Dr. Coira opined that, although appellant had a long-standing emotional condition he was able to work at different jobs and locations for many years prior to working at the employing establishment where increased pressure and persecution from his supervisors and coworkers exacerbated his emotional condition. In the September 22, 2003 report, he reiterated his previous diagnoses and prognosis. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁹ Dr. Coira's October 23, 2002 report was already of record at the time appellant requested reconsideration. Further, his September 22, 2003 report is repetitive of his October 23, 2002 report as he merely restated that appellant suffered from major depression with psychotic features, hypertension and diabetes and his prognosis was poor. Thus, the Board finds that Dr. Coira's October 23, 2002 and September 22, 2003 reports do not constitute a basis for reopening the case for further merit review.

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(1)-(2).

⁸ *Id.* at § 10.607(a).

⁹ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

In a March 19, 2004 report, Dr. Coira reiterated appellant's continuing symptoms, his diagnosis of major depression with psychotic features, hypertension and diabetes and finding that appellant's prognosis was poor. He opined that appellant's physical condition had directly influenced his emotional condition to the point that he was disabled from work and unable to tolerate job-related stress. The Board finds that Dr. Coira's report is repetitive of his previous reports as he only restated appellant's symptoms, his diagnoses and prognosis and his disability for work and, thus, it is insufficient to reopen appellant's claim for a merit review.¹⁰

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to constitute relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁰ *Id.*