

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

ELIPHENE FILIUS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Lauderdale, FL, Employer**

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**Docket No. 05-1913
Issued: January 9, 2006**

Appearances:
G. William Allen, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 16, 2005 nonmerit decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was a September 24, 2002 decision denying appellant's emotional condition claim. This decision was issued more than one year prior to September 14, 2005, *i.e.*, the date appellant filed the present appeal, and therefore the Board does not have jurisdiction over this decision.¹ Therefore the Board does not have jurisdiction over the merits of this case.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record also contains a February 9, 2004 decision of the Board affirming the Office's determination that appellant did not establish that he sustained a stress-related condition in the performance of duty. In the absence of further review by the Office on the issue addressed by the decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

ISSUE

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

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on February 9, 2004 affirming the Office's determination that appellant did not establish that he sustained a stress-related condition in the performance of duty.² On December 12, 2001 appellant, then a 45-year-old postal worker, filed an occupational injury claim alleging that he sustained hypertension and new onset diabetes mellitus due to his work. He alleged that he sustained stress because he was wrongly accused of forging a physician's signature on a compensation form and improperly using an employing establishment vehicle for personal needs, that he was unfairly disciplined in connection with these allegations, and that his supervisors wrongly failed to place him on limited-duty work recommended by his physicians. Appellant asserted that he was told to stay off work for four days due to the forgery allegation and claimed that Patti Lynn, a supervisor, wrongly gave directions to "kick him off the clock because he forged" and stated that she did not "want to see him anymore" at the employing establishment. He also claimed that supervisors subjected him to harassment and discrimination in connection with these matters. The Office denied appellant's stress claim on the grounds that he did not establish any compensable employment factors. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

By letter dated February 1, 2005, appellant requested reconsideration of his claim.

Appellant submitted the transcripts of depositions given in December 2004 by Ms. Lynn and himself which were taken in connection with a legal proceeding he filed against the employing establishment in the U.S. District Court for the Southern District of Florida. Ms. Lynn testified at length regarding the investigations that were initiated regarding appellant's submission of a compensation form and his use of an employing establishment vehicle. She asserted that it was employing establishment procedure to suspend an employee from work whenever an investigation was initiated concerning that employee. Ms. Lynn claimed that she advised appellant to not use an employing establishment vehicle to drive to a medical appointment beyond a prescribed area, but that appellant ignored her instructions. Appellant testified at length regarding his belief that he had been discriminated against by the employing establishment, including the occasions when he had been accused of forging a physician's signature on a compensation form and improperly using an employing establishment vehicle for personal needs. He indicated that he was ultimately cleared of the allegation that he forged a compensation form and asserted that other employees were not punished when they used employing establishment vehicles to drive to medical appointments.

² Docket No. 03-1391 (issued February 9, 2004).

Appellant also submitted medical treatment notes dated between 2000 and 2004 and the results of laboratory testing obtained between 2001 and 2004. Some of the medical treatment notes discussed the treatment of his psychological condition.

By decision dated May 16, 2005, the Office denied appellant's request for merit review of his claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that the evidence or argument submitted by 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁵ 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 on the merits.⁶

ANALYSIS

Appellant claimed that he sustained a stress-related medical condition due to various actions of his supervisors and the Office denied his claim on the grounds that he did not submit sufficient factual evidence to establish any compensable employment factors.

In February 2005, appellant requested reconsideration of his claim and submitted the transcripts of depositions given in December 2004 by Ms. Lynn, a supervisor, and himself which were taken in connection with a legal proceeding he filed against the employing establishment in the U.S. District Court for the Southern District of Florida.

In the transcript of her deposition, Ms. Lynn testified at length regarding the investigations that were initiated regarding appellant's submission of a compensation form and his use of an employing establishment vehicle. She explained in detail her belief that the employment establishment had acted properly in handling these and other matters pertaining to appellant. The record had not previously contained a statement in which Ms. Lynn detailed her viewpoint regarding these matters, *i.e.*, the matters that appellant emphasized in his initial claim

³ 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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

as causing him to sustain a stress-related medical condition.⁷ Appellant's claim was denied on the grounds that he did not submit sufficient factual evidence to establish any compensable employment factors and the deposition transcript of Ms. Lynn would constitute new factual evidence that is directly relevant to this issue. Moreover, the transcript of appellant's deposition contained lengthy testimony in which he provided further detail regarding his belief that he had been harassed and discriminated against by the employing establishment, including the occasions when he was accused of forging a physician's signature on a compensation form and improperly using an employing establishment vehicle for personal needs. Prior to his February 2005 reconsideration request, appellant had only submitted brief statements regarding these claims.

For these reasons, it was improper for the Office to deny appellant's request for further review of the merits of his claim.⁸ The case should be remanded to the Office in order to conduct a merit review of appellant's claim that he sustained a stress-related condition due to employment factors, including a proper consideration of the evidence appellant submitted in connection with his February 2005 reconsideration request. After such development as it deems necessary, the Office should issue an appropriate merit decision regarding this matter.

CONCLUSION

The Board finds that the Office improperly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The case shall be remanded to the Office for a merit review of appellant's claim to be followed by the issuance of a merit decision regarding his claim that he sustained an employment-related stress condition.

⁷ Appellant had previously implicated the actions of Ms. Lynn as playing a role in the development of his claimed stress-related condition. Moreover, it does not appear that the record had previously contained any significant statement from an employing establishment official regarding appellant's claimed employment factors.

⁸ The Board notes that appellant's submission of medical evidence would not be relevant as his claim was denied by the Office on a factual basis, *i.e.*, he had not submitted sufficient factual evidence to establish an employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 16, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 9, 2006
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