

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

ROBERT J. CLOUGH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sarasota, FL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-245
Issued: March 6, 2006**

Appearances:
Lenin V. Perez, 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 November 9, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 26 and September 26, 2005 nonmerit decisions denying his requests for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these nonmerit decisions. The last merit decision of the Office was its August 20, 2004 decision denying appellant's emotional condition claim. As this decision was issued more than one year prior to November 9, 2005, the Board does not have jurisdiction to review the merits of this case.¹

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record also contains an April 5, 2005 decision of the Board affirming the Office's March 1 and August 20, 2004 decisions. In the absence of further review by the Office on the issue addressed by the Board's 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 requests 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 April 5, 2005 finding that he did not sustain an emotional condition in the performance of duty because he had not established any compensable employment factors.² Appellant alleged that he sustained a panic attack when he was wrongly ordered to use a vacuum without a high efficiency particulate air (HEPA) filter on December 3, 2001. He asserted that the employing establishment did not follow safety rules designed to prevent contamination from anthrax and other dangerous substances. Appellant also alleged that he sustained a panic attack on April 21, 2003 when Veta Plummer, an employing establishment manager, ordered his leave to be changed from earned sick leave to leave without pay. The Board found that appellant had not established that the employing establishment committed error or abuse with respect to these administrative functions which related to safety or leave matters.³ The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

By letter dated August 9, 2005, appellant, through his attorney, requested reconsideration of his claim. Appellant argued that his claim was established by an August 1, 2005 report of Dr. Gillian Karantinos, an attending Board-certified psychiatrist. Appellant asserted that she had concluded that his psychiatric disorders were related to work incidents.⁴

By decision dated August 26, 1995, the Office denied appellant's request for merit review.

By letter dated September 6, 2005, appellant, through his attorney, again requested reconsideration of his claim. Appellant submitted a copy of the August 1, 2005 report of Dr. Karantinos and again argued that this report established his claim.⁵ He asserted that the Board improperly found that his fear of exposure to anthrax was not an employment factor. Appellant paraphrased a portion of Dr. Karantinos' report by stating that his March 7, 2002 work-related back injury was intertwined with his emotional condition and that his other physical conditions, including diabetes and high blood pressure, were worsened by work-related stress.

² Docket No. 04-2148 (issued April 5, 2005).

³ The Board found that there was no evidence that anthrax or any dangerous substance was found at the employing establishment. The Board determined that because appellant had not established any compensable employment factors, it was not necessary to consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

⁴ Appellant submitted a copy of the Board's April 5, 2005 decision, but he did not submit a copy of the August 1, 2005 report of Dr. Karantinos at this time.

⁵ He claimed that at least two physicians had determined that he sustained an employment-related psychiatric condition.

By decision dated September 26, 1995, the Office again denied appellant's request for merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ 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.⁷ 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.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 on the merits.⁹

ANALYSIS

Appellant alleged that he sustained an emotional condition due to various concerns regarding safety and leave matters at work and both the Office and the Board denied his claim on the grounds that he did not establish any compensable employment factors.

In connection with an August 2005 reconsideration request, appellant submitted an August 9, 2005 letter in which he argued that his claim was established by an August 1, 2005 report of Dr. Karantinos, an attending Board-certified psychiatrist, who listed the medical diagnoses provided by Dr. Karantinos in her report and asserted that she had concluded that his psychiatric disorders were related to work incidents.¹⁰ However, the submission of this argument concerning medical evidence would not require reopening of appellant's claim because it is not relevant to the main issue of the present case which is factual in nature, *i.e.*, whether the Office properly denied his claim because he did not establish any compensable employment factors.¹¹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹² Appellant submitted a copy of the Board's April 5, 2005 decision, but the Board has held that the

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)(2).

⁸ 20 C.F.R. § 10.607(a).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ Appellant did not submit a copy of the August 1, 2005 report of Dr. Karantinos at this time.

¹¹ See *supra* note 3 discussing the fact that it is unnecessary to consider the medical aspect of a claim if the factual aspect has not been established.

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹³

In connection with a September 2005 reconsideration request, appellant submitted a copy of the August 1, 2005 report of Dr. Karantinos and argued in a September 6, 2005 letter that this report and other medical evidence established his claim. As noted above, such evidence and argument relating to medical matters would not be relevant to appellant's case as his claim was denied on a factual basis for failure to establish compensable employment factors. Appellant asserted that the Board improperly found that his fear of exposure to anthrax was not an employment factor, but this was not a new argument as both the Office and the Board had previously considered and rejected this argument. Appellant paraphrased a portion of Dr. Karantinos' report by stating that his March 7, 2002 work-related back injury was intertwined with his emotional condition and that his other physical conditions, including diabetes and high blood pressure, were worsened by work-related stress. However, appellant did not further explain this comment or otherwise articulate an argument which would relate to the main issue of the present case, *i.e.*, his failure to establish any compensable employment factors.

In the present case, appellant has not established that the Office improperly denied his requests for further review of the merits of its prior decisions under section 8128(a) of the Act, because the evidence and argument he submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office, in its August 26 and September 26, 2005 decisions, properly denied appellant's August and September 2005 reconsideration requests.

CONCLUSION

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

¹³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 26 and August 26, 2005 decisions are affirmed.

Issued: March 6, 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