

**J.P., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL AIR  
DEPOT, NORTH ISLAND, San Diego, CA,  
Employer**

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### Case Submitted on the Record

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

On November 16, 2006 appellant filed a timely appeal of an August 16, 2006 nonmerit decision of the Office of Workers' Compensation Programs, denying his request for reconsideration. Because more than one year has elapsed between the last merit decision dated December 15, 2003 and the filing of the appeal, the Board lacks jurisdiction to review the merits of his case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

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

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated August 3, 2005,<sup>1</sup> the Board found that the Office, in a January 28, 2005 decision, improperly denied appellant's December 10, 2004 request for reconsideration of an Office hearing representative's December 15, 2003 decision on the grounds that it was not timely filed.<sup>2</sup> Accordingly, the Board remanded the case for the Office to adjudicate appellant's reconsideration request in accordance with the criteria set forth in 20 C.F.R. § 10.607(a) and to issue an appropriate decision after any further development it deemed necessary. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts and the history relevant to the present issue are hereafter set forth.

On February 28, 2001 appellant, then a 52-year-old planner and estimator, filed an occupational disease claim. He alleged that on February 6, 2001 he first realized that his aggravated arthritis and elevated blood pressure resulted from an extreme stress disorder due to work and travel requirements.

In his December 10, 2004 request for reconsideration, appellant addressed being demoted by the employing establishment because he was physically unable to travel and forced to travel despite his physical limitations. He noted his discussions with the employing establishment regarding the submission of medical documentation and difficulty in performing the requirements of a demoted sheet metal worker's position. Appellant argued that his back injury and emotional condition claims were untimely processed by the employing establishment which resulted in disorganization and the denial of the claims.

By decision dated August 17, 2006, the Office denied appellant's request for reconsideration. It found that his arguments were either of a repetitious or irrelevant nature and insufficient to warrant a merit review of its prior decision.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>3</sup> 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.<sup>4</sup> To be entitled to a merit review of an

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<sup>1</sup> Docket No. 05-1027 (issued August 3, 2005).

<sup>2</sup> In the December 15, 2003 decision, the hearing representative found that appellant's travel requirements, losing or having his airline ticket stolen, having a heavy workload and sustaining a back injury on January 19, 2001 constituted compensable factors of his employment. The hearing representative, however, found the medical evidence of record insufficient to establish that appellant's emotional condition and/or aggravation of his hypertension were caused by the accepted employment factors.

<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1)-(2).

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.<sup>5</sup> 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**

By letter dated December 10, 2004, appellant disagreed with the Office's finding that he did not sustain an emotional condition and/or aggravation of his hypertension while in the performance of duty because the medical evidence of record did not establish that the claimed conditions were causally related to the accepted compensable factors of his federal employment. The relevant underlying issue is whether his emotional condition and/or aggravation of his hypertension were causally related to the accepted factors of his employment.

In his December 10, 2004 reconsideration request, appellant addressed being demoted by the employing establishment because he was physically unable to travel and forced to travel despite his physical limitations. He noted his discussions with the employing establishment regarding the submission of medical documentation and difficulty in performing the requirements of the demoted sheet metal worker's position. Appellant argued that his back injury and emotional condition claims were untimely processed by the employing establishment which resulted in disorganization and the denial of the claims. However, he did not submit any new medical evidence addressing the relationship of an established employment factor and his claimed conditions. As the issue of whether appellant's emotional condition and/or aggravation of hypertension were causally related to the accepted compensable employment factors is medical in nature, his arguments are not relevant. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of his request for reconsideration. Further, he did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.<sup>7</sup>

### **CONCLUSION**

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

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<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB116 (2000).

<sup>7</sup> *See James E. Norris*, 52 ECAB 93 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board