United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 09-630**
	)	**Issued: October 13, 2009**
U.S. POSTAL SERVICE, TERRY POST OFFICE, Terry, MS, Employer	)	

Appearances:
Appellant, pro se
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 January 5, 2009 appellant filed a timely appeal from a November 14, 2008 nonmerit decision of the Office of Workers' Compensation Programs. Because over one year has elapsed between the most recent merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

On May 16, 2006 appellant, then a 45-year-old postmaster, filed an occupational disease claim alleging that he sustained an emotional condition as a result of stress from his employment. He claimed that due to the increasing demands, expectations and workload involved with managing a midsize office, he could not function. Stress began building in April 2004, and resulted in a breakdown on April 26, 2006. The employing establishment controverted the claim.

By decision dated July 12, 2006, the Office denied appellant's claim on the grounds that his allegations of stress due to being overworked were not supported by the record.[1]

On November 3, 2006 appellant, through his representative, filed a request for reconsideration.

By decision dated January 24, 2007, the Office found that appellant did not establish that he sustained an occupational disease in the performance of duty. It stated that appellant's descriptions of his work factors were vague and that he did not provide credible evidence, such as witness statements or other compelling evidence establishing that he was harassed or overworked during his employment. The Office concluded that appellant did not establish any compensable employment factors such that review of the medical evidence was not warranted.

On May 14, 2007 appellant filed a request for reconsideration. In a May 9, 2007 letter, he stated that the stress level of his job changed significantly in 2004 when he returned from a detail and had to deal with additional issues including Office disorganization, upset employees, Equal Employment Opportunity (EEO) complaints and customer complaints. Appellant's office was 16.2 percent over his clerk budget. Due to the growth of his city and the short clerk budget, he did not have adequate time to perform his duties. Appellant dealt with unrealistic budgets and management advising him that he would be removed, if he did not keep within budget. He became fearful of being removed from his job due to his inability to perform duties. Appellant was in the office working daily to conserve clerk hours, including on holidays. Due to the pressure from his supervisor, he was required to push his employees, creating an unpleasant office environment. Appellant felt harassed, intimidated and undervalued for the actual productive work he was accomplishing. He submitted a series of weekly flash reports dated from week 19 in 2004 through week 26 in 2007, to show that he was shorthanded and had to work over his normal duties. Appellant submitted statements from his wife and mother-in-law. A statement from Diane Brown, a coworker, described his working conditions and a list of postmasters obtained from the employing establishment's website.

On August 24, 2007 the Office referred appellant to Dr. Elizabeth C. Henderson, a Board-certified psychiatrist, for a second opinion evaluation regarding whether his employment contributed to his emotional condition. It provided a statement of accepted facts listing incidents it found occurred in the performance of duty, incidents that occurred that were not factors of employment and incidents which the Office found did not occur. The incidents that the Office found occurred in the performance of duty included that two clerks transferred out of the employing establishment in 2005 and appellant did the work himself instead of using substitute rural carriers. During 2005, some employees were out of work under the Family and Medical Leave Act (FMLA). Appellant was required to handle grievances and customer complaints as part of his normal duties and, from 2005 to 2006, managed at least two EEO complaints. One of his employees used the grievance process to influence management of the office, and he chose to perform extra duties instead of confronting the employee. Prior to appellant's return from detail,

[1] Appellant appealed the July 12, 2006 decision to the Board and his appeal was docketed under No. 06-1741. In an October 4, 2006 letter, he requested that his appeal be dismissed so that he could submit additional evidence and pursue reconsideration before the Office. The Board issued an order dismissing the appeal on November 1, 2006.

the clerk budget was over by 16.2 percent and he held a multifaceted job requiring interaction with customers, employees and supervisors. In August 1999, a disagreement over the feasibility of the budget arose between him and his supervisor.

The incidents which the Office found were not factors of employment included that appellant worked extra hours at his own discretion, that he requested additional budget hours, that he had perceptions and self-generated reactions to his employment situation, that he rarely spoke with his supervisor, that he was denied a request for a downgraded position, that a former employee died in 2006 and that there was a verbal exchange between him and an employee on April 26, 2006. The incidents that the Office found not to have occurred included that Hurricane Katrina caused extra work at appellant's employing establishment, that the growth at the employing establishment and the customer base caused an increase in his workload, that he was in danger of not making his budget for which he would be fired, that the employing establishment was disorganized when he returned from his detail in 2004, that the budget assigned was unrealistic and he was held accountable for any budget overages which occurred while out on detail, that he had a tense relationship with his supervisor, that he was required or asked to work on holidays, that there were increased demands and expectations after he returned from his detail, that he received threats and intimidation letters, that employees were discouraged from using sick leave, that there was tension among the employees and an unpleasant work environment, that a supervisor told him he was not a team player and that he would take him out of the office if he could not commit to work within the clerk budget, that a supervisor denied his request to attend computer training classes, that customers and employees were upset and hostile when he returned from detail, that the employing establishment was understaffed from 2004 to 2006, that customers petitioned to have mail delivered on both sides of the street and that there were auditors inspecting the office twice a week.

In a September 25, 2007 medical report, Dr. Henderson opined that appellant did not sustain a work-related emotional condition. She noted that appellant was diagnosed in April 2006, with adjustment disorder with mixed disturbance of emotions and conduct. However, a review of appellant's complaints and the statement of accepted facts did not support that the job factors led to direct causation, precipitation, aggravation or acceleration of this condition. Dr. Henderson noted that his adjustment disorder had resolved by October 2006 with no residuals. In response to an Office request, she clarified, in an October 16, 2007 medical report, that appellant did not sustain a work-related injury.

By decision dated October 23, 2007, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the accepted employment factors caused or contributed to his diagnosed condition. It found that the weight of the medical evidence rested with Dr. Henderson, who found that appellant did not sustain a work-related emotional condition.[2]

[2] By letter dated September 9, 2008, appellant requested a copy of Dr. Henderson's second opinion medical report. On request by the Office, an Office medical adviser opined that the report should not be released to appellant. It denied appellant's request on December 3, 2008 and notified him of his right to appeal to the Solicitor of Labor. Pursuant to 20 C.F.R. § 501.2, the Board only has jurisdiction over final decisions arising out of the Federal Employees' Compensation Act. As this denial arises out of the Privacy Act, the Board does not have jurisdiction over this matter.

On October 21, 2008 appellant filed a request for reconsideration.[3] In an October 20, 2008 statement, he questioned the background of Dr. Henderson regarding his employment duties and stated that she misdiagnosed him after only talking with him for one hour. He also contended that the Office should have accepted that understaffing was a compensable factor. Appellant submitted documents previously of record. He noted that the postmaster replacing him only stayed 100 days before he was removed from the employing establishment. Appellant denied the employing establishment's contention that his emotional condition was due to other financial and medical problems. He highlighted the statements from his wife and mother-in-law. Appellant further submitted a list of postmasters obtained from an employing establishment's website.

By decision dated November 14, 2008, the Office denied further merit review on the grounds that the arguments and factual evidence were cumulative and repetitive. The financial documents, weekly flash report and list of postmasters from the employing establishment's website were irrelevant to the issue of whether appellant established causal relationship.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[4] 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.[5] 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.[6] 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.[7]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[8] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[9] While a reopening of a case may be predicated solely on a legal premise not

[3] The Board notes that the request was received on October 24, 2008. However, since the postmark on the request envelope was stamped October 21, 2008, the Office treated the request as timely. *See* 20 C.F.R. § 10.607(a).

[4] 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).

[5] 20 C.F.R. § 10.606(b)(2).

[6] *Id*. at § 10.607(a).

[7] *Id*. at § 10.608(b).

[8] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[9] *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

previously considered such reopening is not required where the legal contention does not have a reasonable color of validity.[10]

ANALYSIS

The Office accepted that some of appellant's claimed work factors occurred in the performance of duty but denied his claim finding that the medical evidence did not establish that he sustained an emotional condition as a result of these factors. It also denied certain of the claimed factors alleged, including that appellant was understaffed. The most recent merit decision on appellant's claim was October 23, 2007. He requested reconsideration on October 21, 2008. The issue is whether the Office properly denied appellant's request for reconsideration without a merit review.

In support of his reconsideration request, appellant submitted an October 20, 2008 statement. He contended that Dr. Henderson did not have sufficient knowledge of his employment duties and had she misdiagnosed him after only speaking with him for an hour. However, appellant did not submit any evidence to support his allegations or to show that Dr. Henderson's report or that the statement of accepted facts provided to the doctor were biased or deficient. The Board finds this argument lacks reasonable color of validity.[11] Appellant noted that the replacement postmaster stayed less than 100 days prior to being removed. However, this contention is not relevant to the issue on which his claim was denied by the Office, the deficiency of supporting medical evidence.[12]

Appellant denied the employing establishment's contention that his emotional condition was related to marital and financial problems. He submitted documentation of a home loan and his Thrift Savings Plan. The Board finds that this argument and evidence was also insufficient to require the Office to reopen the case. This material is not relevant to the issue of whether employment factors caused or contributed to appellant's emotional condition. The Office did not base any of its decisions on his financial or marital status as it is not dispositive on the issue of whether his work was a causal factor in his emotional condition. This evidence is not relevant to the underlying issue and not sufficient to require further merit review.[13]

Appellant disagreed with the Office's failure to accept being understaffed as a compensable employment factor. He highlighted previously submitted letters and resubmitted a weekly flash report for week 26 in 2007. Appellant reiterated his contention that the understaffing of his office was a primary reason for his emotional condition and resubmitted evidence already considered by the Office. He did not submit any relevant or pertinent new evidence to establish that he was understaffed. The Office previously considered this evidence. Evidence that is repetitious or duplicative of that already in the case record does not constitute a

[10] *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007); *John F. Critz*, 44 ECAB 788, 794 (1993).

[11] *See Elaine M. Borhini*, 57 ECAB 549 (2006); *Charles A. Jackson*, 53 ECAB 671 (2002).

[12] Evidence that does not address the particular issued involved constitutes no basis for reopening a case. *D'Wayne Avila*, 57 ECAB 642 (2006).

[13] *Id*.

basis for reopening a claim for further merit review.[14] Appellant resubmitted a list of postmasters from the employing establishment's website. This evidence is repetitive of evidence already contained in the record.[15]

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant and previously unconsidered legal argument or submit relevant and pertinent new evidence.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2009
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

[14] *See Brent A. Barnes*, 56 ECAB 336 (2005).

[15] Evidence which repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case. *Eugene F. Butler*, *supra* note 8.