

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. HALFACRE, II and DEPARTMENT OF THE AIR FORCE,
WARNER ROBINS AIR LOGISTIC CENTER, GA

*Docket No. 00-958; Submitted on the Record;
Issued February 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that the evidence was insufficient to warrant merit review of the claim.

The case has been before the Board on prior appeals. In a decision dated June 23, 1994, the Board found that appellant had not established that he sustained an emotional condition in the performance of duty.¹ The Board affirmed decisions of the Office dated April 27 and January 7, 1993 and June 24, 1992.

In a decision dated March 7, 1995, the Office determined that appellant's January 19, 1995 request for reconsideration was insufficient to warrant merit review of the claim. Appellant filed an appeal with the Board. By decision dated June 26, 1996, the Board noted that it had not received the case record and remanded the case to the Office for proper assemblage of the case record and an appropriate decision.² The record indicates that the Office was unable to locate the original case file and the file was reconstructed.

By decision dated September 22, 1999, the Office determined that the evidence was insufficient to warrant a merit review of the claim.

The Board finds that appellant has not submitted sufficient evidence to warrant reopening the case for merit review.

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 provides that a claimant may

¹ Docket No. 93-1809 (issued June 23, 1994).

² Docket No. 95-1873 (issued June 26, 1996).

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, the last decision on the merits is the Board's June 23, 1994 decision; the Board reviewed all evidence submitted prior to the Office's April 27, 1993 decision. At the time appellant filed his appeal with the Board in 1995, the only decision over which the Board had jurisdiction was the March 7, 1995 nonmerit decision. The Board's June 26, 1996 decision did not require the Office to issue a merit decision; had the case record been transmitted to the Board the only decision before the Board would have been the March 7, 1995 nonmerit decision. While the reconstruction of the record delayed adjudication of the case, appellant did have an opportunity to submit additional evidence or argument.

The issue on appeal is whether appellant has submitted evidence after April 27, 1993 that is sufficient to meet the requirements of section 10.606(b)(2). The Board notes that the underlying claim was denied on the grounds that appellant did not allege and substantiate compensable work factors as contributing to an emotional condition.⁶ Therefore, appellant must submit relevant and pertinent evidence on this issue to meet the requirement of section 10.606(b)(2)(iii).

A review of the record indicates that appellant did not submit any relevant and pertinent evidence on compensable work factors. The record contains several letters to congressional representatives, which do not provide any pertinent information. Appellant also submitted a May 15, 1999 statement from his wife noting appellant's frustration at not having a permanent position. This allegation had been raised prior to April 27, 1993 and does not constitute new and relevant evidence. Appellant's wife also asserted that it was obvious that a supervisor, Mr. Stanley, "intended to force [appellant] out." To the extent that appellant is alleging error or

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁶ Until a compensable work factor is established, the medical evidence is not addressed. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

abuse by a supervisor,⁷ there was no pertinent evidence submitted in support of such an allegation.

The Board finds that appellant has not submitted relevant and pertinent evidence, not previously considered, on the issue of compensable work factors. Moreover, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a new and relevant legal argument. Accordingly, the Board finds that the Office properly refused to reopen the case for review of the merits of the claim.

The decision of the Office of Workers' Compensation Programs dated September 22, 1999 is affirmed.

Dated, Washington, DC
February 23, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁷ It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee. The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment. See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).