

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUIS RODRIGUEZ and U.S. POSTAL SERVICE,
BOULEVARD STATION, Bronx, NY

*Docket No. 00-693; Submitted on the Record;
Issued June 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied reopening appellant's claim for further consideration of the merits pursuant to 5 U.S.C. § 8128.

On October 11, 1996 appellant, then a 61-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on September 11, 1996, due to harassment by the employing establishment, he suffered a nervous breakdown and a stress reaction. The employing establishment controverted the claim. By decision dated January 2, 1997, the Office denied appellant's claim, finding that the evidence failed to establish that the injury occurred in the performance of duty. The Office specifically noted that appellant reacted to his supervisor instructing him to take more mail than he had originally taken and that appellant failed to show that the supervisor acted in an abusive matter in doing so. The Office also noted that appellant's version of the events, *i.e.*, that management threatened him and yelled at him in front of other employees, was contradicted by the supervisor and a witness. Accordingly, as the Office found that appellant had not submitted evidence that his injury arose in the performance of duty, his claim was denied.

By letter dated January 13, 1997, appellant requested reconsideration and submitted further medical evidence.

In a decision dated February 10, 1997, the Office reviewed appellant's case on the merits, and denied modification, finding that the evidence submitted in support of his application was not sufficient to warrant modification of the January 2, 1997 decision.

By letter dated June 12, 1997, appellant filed an appeal with this Board. However, by order dated October 30, 1997, this Board, at appellant's request, dismissed the appeal, so that appellant could pursue reconsideration before the Office.

In a letter to the Office dated November 29, 1997, appellant noted that he was now permitted by this Board to request reconsideration, and enclosed the Board's October 30, 1997

order. The documents appellant submitted with this letter included records of medical bills, a further statement by appellant as to the facts of the case and a letter from appellant's daughter in which she expressed her support for her father's claim.

In a letter to the Office dated January 27, 1999, appellant requested the status of his case. By letter dated July 2, 1999, the Office responded stating that appellant must specifically state, in writing, that he is requesting reconsideration in order for the Office to reconsider his claim. By letter dated July 29, 1999, appellant requested reconsideration from the Office.

In a decision dated October 14, 1999, the Office denied appellant a merit review, as it found that appellant did not submit any new, relevant evidence not previously considered by the Office.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on November 15, 1999, the only decision over which the Board has jurisdiction on this appeal is the Office's October 14, 1999 decision denying reconsideration. The Board does not have jurisdiction over the earlier decision on the merits of the case.²

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”³

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may 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 legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2) (1999).

an application for review of the merits of the claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵

The reason appellant's claim was denied was that he had not established a compensable factor of employment. None of the evidence submitted by appellant on reconsideration provides persuasive evidence on this crucial issue. The medical bills and for that matter, medical reports, are irrelevant to the issue of whether appellant established a compensable factor of employment in the performance of duty. Appellant's statement on reconsideration is duplicative of arguments already considered by the Office. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁶ Appellant's daughter's statement is irrelevant as there is no evidence that appellant's daughter had any first-hand knowledge of the circumstances of appellant's employment. Accordingly, the Office did not abuse its discretion in denying merit review.

The decision of the Office of Workers' Compensation Programs dated October 14, 1999 is affirmed.

Dated, Washington, DC
June 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ 20 C.F.R. § 10.608(b) (1999).

⁶ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).