

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. PIETRO and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 01-1961; Submitted on the Record;
Issued August 14, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a) in its May 2, 2001 decision; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a) in its July 26, 2001 decision.

This case has previously been before the Board. In its November 2, 2000 decision, the Board found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty on August 25, 1997. The Board also found that the Office properly denied appellant's request for a merit review of his claim. The facts are accurately set forth in this decision and are incorporated herein by reference.¹

In a January 29, 2001 letter, appellant requested reconsideration of the Office's decision. By decision dated May 2, 2001, the Office denied appellant's request for a merit review of his claim on the grounds that the evidence submitted was irrelevant, immaterial and cumulative, and thus, insufficient to warrant review. In a June 7, 2001 letter, appellant requested reconsideration of the Office's decision.

By decision dated July 26, 2001, the Office again denied appellant's request for a merit review of his claim on the grounds that the evidence submitted was of a repetitious and immaterial nature, and thus, insufficient to warrant a review of its prior decision.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a) in its May 2, 2001 decision.

¹ Docket No. 99-1386 (issued November 2, 2000).

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² 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) submit relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ 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.⁵

In support of his January 29, 2001 request for reconsideration, appellant submitted the Board's November 2, 2000 decision, a July 16, 1997 prearbitration settlement agreement, correspondence between himself and the employing establishment, a July 27, 1994 Equal Employment Opportunity (EEO) settlement agreement, and medical treatment notes and reports. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening the case.⁶ As the Office previously considered the above evidence submitted by appellant on reconsideration, it is repetitive in nature, and thus, insufficient to warrant reopening appellant's claim on the merits.

In a May 6, 1998 investigative affidavit and narrative statement, Joe Berezio, an employing establishment labor relations manager, explained that he disagreed with the prearbitration agreement that appellant alleged caused his emotional condition on August 25, 1997. Mr. Berezio stated that he explained to appellant that the agreement was null and void, and that it should not have been distributed to him. The Board previously considered the employing establishment's explanation regarding the distribution of the prearbitration agreement and determined that the employing establishment did not commit error or abuse in handling this administrative matter. As Mr. Berezio's statement is repetitive of evidence previously considered, it is repetitive in nature, and thus, insufficient to warrant reopening appellant's claim on the merits.

Appellant submitted a civil service retirement form, correspondence between himself and the employing establishment regarding his hearing loss, correspondence from the employing establishment concerning another employee, excerpts from an employing establishment handbook providing guidelines on reasonable accommodations, the Board's September 21, 2000 decision,⁷ pay stubs and documents addressing tinnitus. The evidence submitted by appellant is

² 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).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁷ In its September 21, 2000 decision, the Board found that appellant's exposure to loud noise constituted a compensable factor of employment. The Board, however, found the medical evidence of record insufficient to establish that appellant's emotional condition was caused by the loud noise.

irrelevant to the issue in this case, whether appellant sustained an emotional condition on August 25, 1997 in the performance of duty.

Similarly, the October 17, 2000 report of Dr. Waden E. Emery, III, a Board-certified psychiatrist, and the October 27, 2000 report of Dr. Laurence Miller, a psychologist, are irrelevant. The Board found that appellant had failed to establish that he sustained an emotional condition in the performance of duty on August 25, 1997 due to compensable factors of his employment. Thus, it is unnecessary to address the medical evidence of record.

Appellant submitted materials addressing the development of an emotional condition following an injury. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing a causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.⁸

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits in its May 2, 2001 decision.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a) in its July 26, 2001 decision.

In support of his June 7, 2001 request for reconsideration, appellant submitted the Office's May 2, 2001 decision, the Board's November 2, 2000 decision, the July 16, 1997 prearbitration settlement agreement, pay stubs, the July 27, 1994 EEO settlement agreement, Mr. Berezio's statement and affidavit, Dr. Miller's October 27, 2000 report, Dr. Emery's October 17, 2000 report, requests for leave, the Board's September 21, 2000 decision, his November 11, 2000 letter regarding the Board's November 2, 2000 decision and guidelines on reasonable accommodation. This evidence was previously considered by the Office, and thus, it is insufficient to warrant reopening appellant's claim on the merits.⁹

The Board's June 26, 1995 decision and documents regarding appellant's previous claims are irrelevant to the issue in this case. Similarly, Dr. Miller's July 17, September 8 and October 18, 1997, September 15, 1998 and May 14, 2001 reports and Dr. Emery's October 27, 1998 treatment notes are irrelevant because there is no need to address the medical evidence of record since appellant failed to establish that he sustained an emotional condition in the performance of duty on August 25, 1997 due to compensable factors of employment.

⁸ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

⁹ *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

Because appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits in its July 26, 2001 decision.

The July 26 and May 2, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 14, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member