

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. MYERS and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 01-1203; Submitted on the Record;
Issued January 7, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On August 2, 1997 appellant, then a 38-year-old mailhandler, filed an occupational disease claim alleging that his anxiety attacks and depression resulted from his federal employment. He explained that he became depressed due to the financial hardship from not receiving his regular pay. Appellant also stated that he experienced heart palpitations as a result of arguments at work. He ceased working on June 7, 1997 and returned on July 9, 1997.

After further development of the record, the Office denied appellant's claim by decision dated March 16, 1998. Appellant subsequently requested an oral hearing and reconsideration. On March 22, 1999 the Office denied appellant's January 15, 1999 request for a hearing as untimely filed. However, the Office considered appellant's January 15, 1999 correspondence as a request for reconsideration and, after reviewing the claim on the merits, denied modification in a decision dated April 30, 1999. On February 2, 2000 appellant filed another request for reconsideration. By decision dated May 26, 2000, the Office denied appellant's request for reconsideration without addressing the merits of his claim.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. §10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹ Section 10.608(b) provides that when an

¹ 20 C.F.R. § 10.606(b)(2) (1999).

application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

Appellant's February 2, 2000 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The majority of the evidence appellant submitted on reconsideration was previously of record. Because this evidence does not constitute "relevant and pertinent new evidence," it is insufficient to warrant modification of the prior decision.³

Appellant also submitted several documents pertaining to claims he filed for traumatic injuries sustained on February 8 and July 30, 1996 and a claimed recurrence of disability on March 4, 1997.⁴ This evidence, however, does not address whether appellant's claimed emotional condition arose in the performance of duty. Consequently, the evidence regarding appellant's February 8 and July 30, 1996 and March 4, 1997 claims is not relevant to the issue on reconsideration.⁵

Additionally, appellant submitted a September 17, 1996 letter from Vinnie Malloy, senior plant manager, advising him that an investigation of his July 30, 1996 complaint of verbal harassment by Horace Weekes revealed no evidence of harassment. The prior record includes evidence that appellant filed a complaint against Mr. Weekes on July 30, 1996. And appellant previously advised the Office of the correspondence he received from Ms. Malloy regarding the disposition of his complaint. Because Ms. Malloy's September 17, 1996 letter merely confirms information already of record, it is cumulative in nature and thus insufficient to warrant reopening the claim.⁶ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

² 20 C.F.R. § 10.608(b) (1999).

³ Evidence that 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 the claim. *James A. England*, 47 ECAB 115 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

⁴ The prior evidence of record indicates that the Office denied appellant's claim for a traumatic injury occurring on February 8, 1996.

⁵ Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

⁶ *Saundra B. Williams*, *supra* note 3.

The May 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member