

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTOR A. COFFEY and U.S. POSTAL SERVICE,
POST OFFICE, Patchogue, NY

*Docket No. 02-236; Submitted on the Record;
Issued July 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The case was before the Board on a prior appeal.¹ In a decision dated February 19, 1999, the Board affirmed Office decisions dated April 17 and December 13, 1996. The Board found that appellant had not established an emotional condition causally related to compensable work factors. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

In a letter dated July 10, 2001, appellant requested reconsideration of his claim. By decision dated August 14, 2001, the Office determined that the evidence was insufficient to warrant a merit review of the claim.

The Board finds that appellant is entitled to a merit review of his claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's 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 relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.608(b) states that any application for review that does not

¹ See Docket No. 97-925 (issued February 19, 1999).

² 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").

³ 20 C.F.R. § 10.606(b)(2).

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.⁴

As the Board noted in its prior decision, the Office accepted that the employing establishment had erred with respect to appellant's removal from employment in 1988, and that appellant had been required to work outside his work limitations. Allegations of discrimination, however, had not been supported by probative and reliable evidence.

In the August 14, 2001 decision, the Office determined that appellant had not submitted new and relevant evidence. The Office does not specifically discuss the submission of an April 7, 2000 opinion and order from the Merit Systems Protection Board (MSPB). In that order, the MSPB held that, for the period January 28 to April 29, 1994, the employing establishment improperly required appellant to use annual leave. The MSPB determined that appellant should be permitted to use available sick leave during that period and that appellant was entitled to payment for any resulting unused annual leave.

The Board finds that the April 7, 2000 order constitutes new and relevant evidence with respect to whether appellant has established an additional compensable work factor as a result of administrative error by the employing establishment. As appellant has submitted new and relevant evidence, he is entitled to a merit review of his claim under 20 C.F.R. § 10.606(b)(2). The case will therefore be remanded to the Office for an appropriate merit decision.

The decision of the Office of Workers' Compensation Programs dated August 14, 2001 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
July 3, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

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