

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY R. CUMMINGS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Greensboro, NC

*Docket No. 02-222; Submitted on the Record;
Issued June 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

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.

This case has previously been before the Board on a prior appeal. In a decision dated July 11, 2001, the Board affirmed the Office hearing representative's determination that appellant had not sustained an emotional condition in the performance of duty.¹ The Board also affirmed the Office's decision denying merit review. The history of the case is found in the Board's prior decision and is incorporated herein by reference.

By letter dated September 18, 2001, appellant requested reconsideration. The Office denied appellant's request for reconsideration in a nonmerit decision dated October 3, 2001.

The Board finds that the Office properly determined appellant's request for reconsideration was insufficient to warrant merit review of the 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 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 When a claimant fails to meet

¹ Docket No. 00-1955.

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)(2).

one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁴

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. The evidence he submitted does not support a claim of error. The only new evidence appellant submitted consisted of copies of publications and regulations regarding medical records privacy, letters to the employing establishment's inspection service, letters dated January 30 and June 20, 2001 from Sherrie L. Myers, Manager, Human Resources Mid-Atlantic Area, U.S. Postal Service. In her January 30, 2001 letter, Ms. Myers responded to appellant's letters and noted that normally the Equal Employment Opportunity (EEO) investigator is the person who gathers evidence for an EEO complaint, not labor relations and that she cannot "intervene outside of your chose forum of appeal." She also noted the issue of his letter of warning in lieu of suspension "should be resolved" because "such actions would automatically be purged" when an employee retires. Ms. Myers advised appellant in her June 20, 2001 letter that discipline files are retained for a specified time and then destroyed and that his September 1998 letter of warning in lieu of suspension would have been removed from his file at the time of his retirement. None of the evidence submitted is new and relevant evidence on the issue of whether appellant has established that he sustained an emotional condition due to factors of his employment. The Board finds that appellant did not meet any of the requirements under section 10.606(b)(2) and therefore the Office properly denied the request for reconsideration without merit review of the claim.

The October 3, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

⁴ 20 C.F.R. § 10.608(b).