

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD F. FRYE and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 02-1619; Submitted on the Record;
Issued November 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

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

This case was previously before the Board and the Office's decision dated January 9, 1998 was affirmed. On August 27, 1997 appellant filed an occupational disease claim alleging that he sustained an emotional condition, which he attributed to the actions of management concerning his position as an accounting technician. On January 9, 1998 the Office denied appellant's claim on the grounds that he failed to establish any compensable factors of his federal employment. The complete factual and procedural history of the case as contained in the Board's November 21, 2000 decision is incorporated by reference.¹

Following the Board's decision issued November 21, 2000, appellant, through his attorney Stephen Scavuzzo, Esq., requested reconsideration with the Office on February 15, 2001. In the request letter, Mr. Scavuzzo indicated that medical reports were enclosed from Dr. Padamani Atri, an attending physician, which demonstrated that appellant's emotional condition arose due to an unusually heavy workload and imposition of unreasonable deadlines. Appellant's counsel argued therefore that the Office's January 9, 1998 decision should be reversed. No medical evidence was submitted with the request.

By decision dated June 7, 2001, the Office denied a merit review of the prior decision on the grounds that the medical evidence neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that the Office did not abuse its discretion by denying further merit review.

¹ Docket No. 99-720 (issued November 21, 2000).

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 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 a review on the merits.⁵

The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶ The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

In the present case, appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or a fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office.

In appellant's February 15, 2000 request, appellant argued that the medical evidence submitted on reconsideration demonstrated that appellant's emotional condition was due to an unusually heavy workload and imposition of unreasonable deadlines, but he submitted no new evidence to support this argument that had been raised before. As appellant failed to meet the requirements for a merit review, the Board finds that the Office properly denied his request for reconsideration.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ 20 C.F.R. § 10.608(b).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decision of the Office of Workers' Compensation Programs dated June 7, 2001 is affirmed.

Dated, Washington, DC
November 7, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member