United States Department of Labor
Employees' Compensation Appeals Board

CHARLES WATSON, JR., Appellant	)	
and	)	**Docket No. 03-1835**
	)	**Issued: December 15, 2003**
U.S. POSTAL SERVICE, POST OFFICE, Sacramento, CA, Employer	)	

Appearances:
Charles Watson, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 15, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs decision dated April 14, 2003, which found that his request for reconsideration was insufficient to warrant review of its prior decisions. Since more than one year elapsed between the issuance of the Office's most recent merit decision on August 6, 2001 and the filing of appellant's appeal on July 15, 2003 the Board lacks jurisdiction to review the merits of appellant's claim.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim.

[1] 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

FACTUAL HISTORY

On May 28, 1975 appellant, then a 28-year-old custodial laborer, filed a claim for allergies related to exposure to dust and nervousness related to exposure to chemicals and to job pressure.[2] He stopped work on April 20, 1975 and his disability retirement was effective October 1, 1975.

By decision dated November 18, 1976, the Office found that appellant's disability did not result from a personal injury sustained in the performance of duty or from a disease proximately caused by his federal employment. He requested reconsideration on numerous occasions and the Office denied modification of its prior decision, by decisions dated February 15, 1979, February 23, 1981, June 11, 1982, February 19, 1985 and March 28, 1986. The Office also refused to reopen appellant's case for further review of the merits of his claim by decisions dated May 15, 1981, December 15, 1983, December 30, 1986, May 6 and December 10, 1987, and April 18, 1988.

Appellant appealed the April 18, 1988 and December 10, 1987 decisions to the Board, which, by decision dated November 30, 1988, found that the Office did not abuse its discretion by refusing to reopen his case for further review of the merits of his claim.[3]

By letter dated November 10, 1994, appellant again requested reconsideration before the Office. By decision dated November 21, 1994, the Office found that his request for reconsideration was not timely filed and did not demonstrate clear evidence of error. Appellant appealed this decision to the Board, which, by decision dated June 11, 1997, found that his request for reconsideration was not timely filed, but that the Office's decision did not address or even acknowledge the medical evidence appellant submitted with his request, precluding the Board from determining the basis on which the Office determined that the additional evidence did not show clear evidence of error.[4]

On remand the Office, by decision dated July 11, 1997, found that appellant's request for reconsideration was not timely filed and did not demonstrate clear evidence of error. The Board affirmed this decision in a January 3, 2000 decision.[5]

By letter dated August 17, 2000, appellant requested reconsideration before the Office and submitted additional medical evidence. By decision dated August 6, 2001, the Office found that the additional evidence was speculative and lacked rationale and that appellant had not

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[2] On November 29, 1979 appellant filed a claim for an occupational disease, attributing his nervous condition to harassment and to medications for his allergies.

[3] Docket No. 88-1481.

[4] Docket No. 95-1253.

[5] Docket No. 98-181.

discharged his burden of proving that his emotional condition was causally related to his exposure to dust and chemicals in his employment.

By letter dated May 14, 2002, received by the Office May 28, 2002, appellant requested reconsideration and submitted a September 27, 2001 report from Dr. Ramon Andres Garcia, a Board-certified psychiatrist, in addition to copies of several medical reports that were previously in the case record. He contended that Dr. Garcia's report constituted relevant and pertinent new evidence and that he was advancing a relevant legal argument that the Office failed to recognize that the mental part of his allegations was reported in a timely manner. In the September 27, 2001 report, Dr. Garcia described appellant's work history and reviewed prior medical reports, stating that they showed that the initial aggravation of his mental symptoms that caused his first medical leave in 1973, was "due to chemicals and dust he encountered while employed at the main branch of the [employing establishment]" and that reaggravation of his affective disorder occurred after he was transferred back to the main branch. Dr. Garcia concluded that appellant's "past and present problems with psychiatric symptoms [were] aggravated or proximately caused by the conditions of his employment." Appellant later submitted an October 22, 2002 letter contending that the mental aspect of his allegations was reported in a timely manner.

By decision dated April 14, 2003, the Office refused to reopen appellant's case for further review of the merits of his claim. The Office found that the statements and arguments presented in his two letters were substantially similar to those presented in appellant's prior requests for reconsideration, that the argument that his emotional condition was timely reported was irrelevant and that all the medical reports, but the September 27, 2001 report from Dr. Garcia were already contained in the case record and considered in the Office's prior decisions. The Office found that Dr. Garcia's September 27, 2001 report reiterated the very same arguments and opinions that he previously expressed in four prior reports and considered in prior Office decisions.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b)

provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[7]

ANALYSIS

Appellant's argument that the Office failed to recognize that the mental part of his allegations was reported in a timely manner is irrelevant, as his claim was never denied on the basis of failure to timely file a claim. The reports that are duplicates of reports already contained in the record are not "new" evidence. The September 27, 2001 report from Dr. Garcia is "new," in the sense that it was not previously contained in the case record. However, the substance of this report is the same as that of Dr. Garcia's July 30, 1999 report, in that Dr. Garcia reviewed the same medical reports and history and reached the same conclusion. The September 27, 2001 report is insufficient to require the Office to reopen the case for further review of the merits of appellant's claim.

CONCLUSION

The Office properly refused to reopen appellant's case for further review of the merits of his claim.

[6] *Eugene F. Butler,* 36 ECAB 393 (1984).

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

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member