

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERMAN GIBSON and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 02-1485; Submitted on the Record;
Issued June 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On June 19, 1996 appellant, then a 37-year-old maintenance mechanic, filed an occupational claim alleging emotional stress due to factors of his federal employment. In a decision dated February 11, 1997, the Office denied appellant's claim for compensation on the grounds that the medical record was insufficient to establish fact of injury.

Appellant subsequently requested reconsideration and the Office denied modification in decisions dated March 10 and October 19, 1998 respectively. The Office determined that appellant either failed to allege a compensable work factor or that the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed psychological condition and his employment.

On November 11, 1998 appellant filed an appeal with the Board. He subsequently requested on February 18, 1999 that the appeal be withdrawn so he could pursue reconsideration with the Office. The Board dismissed appellant's appeal by decision dated February 26, 1999.

Appellant had filed a request for reconsideration on September 2, 1999. The Office denied his reconsideration request in a decision dated September 23, 1999.¹

Appellant filed another reconsideration request on March 18, 2000, which was also denied by the Office on May 30, 2000.

¹ The record indicates that the Office first issued a decision on September 23, 1999, but it was sent to the wrong address.

On January 23, 2001 appellant filed for reconsideration and submitted copies of prior Office decisions and the Board's decision. He also submitted a psychological evaluation by Dr. David B. Rush, a licensed clinical psychologist.

On March 19, 2001 the Office issued a decision denying modification. The Office determined that the opinion of Dr. Rush did not identify any specific employment-related factors as being responsible for appellant's diagnosed condition of adjustment disorder.²

In a June 1, 2001 letter, appellant requested reconsideration of the March 19, 2001 decision. He argued that the Office had not given proper consideration to Dr. Rush's opinion.

In a decision dated July 18, 2001, the Office denied appellant's reconsideration request.

The Board finds that the Office properly denied appellant's request for reconsideration on the merits under section 8128.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed his appeal with the Board on May 3, 2002, the only decision before the Board is the Office's July 18, 2001 decision denying reconsideration on the merits. The Board does not have jurisdiction to review the Office's denial of compensation.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.⁴ The regulations provide 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) constituting relevant and pertinent new evidence not previously considered by the Office.⁵ 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 also does not constitute a basis for reopening a case.⁷ When a claimant

² Dr. Rush related appellant's description of an unsupportive work environment where his supervisors placed unrealistic demands on him. The Office determined that the physician did not identify for purposes of his diagnosis whether employment factors were attributable to appellant's emotional condition.

³ See 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Earl David Seal*, 49 ECAB 152 (1997).

⁴ 5 U.S.C. § 8128; see *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ 20 C.F.R. § 10.606(b) (1999).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

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

fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.”⁸

In this case, appellant requested on reconsideration that the Office explain why the report from Dr. Rush was insufficient to establish work factors as attributable to his diagnosed psychological condition. Appellant, however, did not show in his reconsideration request that the Office erroneously applied or interpreted a specific point of law. He failed to advance a relevant legal argument to show that the Office erred in denying his compensation. Furthermore, appellant did not submit any new and relevant evidence to warrant a merit review. Consequently, because he has not satisfied the requirements of section 8128, the Office properly denied his request for reconsideration on the merits.

The decision of the Office of Workers’ Compensation Programs dated July 18, 2001 is hereby affirmed.

Dated, Washington, DC
June 16, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ 20 C.F.R. § 10.608(b) (1999).