

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CEPHUS R. DANIELS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 02-1842; Submitted on the Record;
Issued March 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for reconsideration.

Appellant, a 51-year-old housekeeping aide supervisor, filed a notice of occupational disease, alleging that he developed depression and anxiety with chronic stress due to interactions with his supervisors. In a letter dated July 27, 2001, the Office requested additional factual and medical evidence. By decision dated October 2, 2000, the Office denied appellant's claim for an emotional condition finding that he failed to substantiate a compensable factor of employment.

Appellant, through his attorney requested an oral hearing on October 10, 2000. He testified at his oral hearing on January 25, 2001 and identified additional employment incidents, which he felt caused or contributed to his emotional condition. By decision dated June 20, 2001 and finalized June 22, 2001, the hearing representative denied appellant's claim finding that he failed to substantiate a compensable factor of employment, which he believed contributed to his diagnosed emotional condition.

On May 15, 2002 appellant, through his attorney, requested reconsideration of the Office's decisions and submitted additional medical evidence. By decision dated May 29, 2002, the Office declined to reopen appellant's claim for consideration of the merits finding that he failed to submit relevant new evidence in his request for reconsideration.¹

The Board finds the case not in posture for decision.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that

¹ As appellant's request for review by the Board was dated June 25, 2002, more than one year after the last merit decision, the hearing representative's June 22, 2002 decision, the Board does not have jurisdiction to consider the merits of appellant's claim on appeal. 20 C.F.R. § 501.3(d)(2).

the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office; or constitutes relevant and pertinent new evidence not previously considered by the Office.²

In the May 15, 2002 request for reconsideration, appellant's attorney submitted additional medical evidence not previously considered by the Office. However, until a compensable employment factor is substantiated as factual, the Office need not consider the medical evidence.³ As appellant's claim was denied due to his failure to substantiate a compensable factor of employment, the additional medical evidence is not relevant.

Appellant's attorney reviewed the factors of employment to which he attributed his emotional condition including disparate treatment by his supervisors, Juanita Moore and John Stelsel; the requirement that appellant complete his reports on a new form without previous information that the form had been updated; refusing to allow him to park in a space which his previous supervisor used; and inadequate assistance in disciplining his employees, specifically an employee who was chronically late. Appellant previously attributed his emotional condition to these factors and the Office addressed the allegations in its June 22, 2001 decision. Material, which is repetitious or duplicative of that already in the case record, has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴

Appellant, through his attorney, alleged that he was harassed by Ms. Moore as she refused to receive medical evidence in support of his absence from work. Appellant's attorney asserted that Ms. Moore placed appellant in an absent-without-leave status until his physician sent supportive medical evidence by facsimile. He further alleged, "[Appellant] was then contacted by Ms. Moore and informed that he had to bring the letter personally rather than having it faxed. [He] believes that she was doing this on purpose to harass him. [Appellant] knew under the [employing establishment's] guidelines that the information he provided was more than sufficient." He has submitted a new legal argument not previously considered by the Office, *i.e.*, that his emotional condition was due to the additional factor of harassment or discrimination through the requirement that he deliver in person medical evidence to support his absence from work. As noted previously when a claimant advances a relevant legal argument not previously considered by the Office such argument is sufficient to require the Office to reopen his claim for consideration of the merits.⁵

As appellant has submitted a relevant legal argument, in the form of the allegation of an additional factor of employment, the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits. On remand, the Office should review appellant's claim on the merits and issue an appropriate decision.

² 5 U.S.C. §§ 10.609(a) and 10.606(b).

³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁴ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

⁵ *Cawthorn Miree, Jr.*, Docket No. 00-1306, (issued March 28, 2001).

The May 29, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
March 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member