

**United States Department of Labor
Employees' Compensation Appeals Board**

EFRAIN LUIGGI, Appellant)
and) Docket No. 04-261
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 22, 2004
San Juan, PR, Employer)

)

Appearances:
Efrain Luiggi, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 10, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 3, 2003 that denied reconsideration of claim number 02-0757195 and a September 3, 2003 decision which denied reconsideration of claim number 02-0719702 as not timely filed and not establishing clear evidence of error. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether the Office properly denied reconsideration at appellant's claim, number 02-0757195, on September 3, 2003; and (2) whether the Office properly denied that appellant's request for reconsideration of claim number 02-0719702 as not timely filed and not establishing clear evidence of error.

FACTUAL HISTORY

With respect to appellant's claim number 02-0719702 which has not previously been before the Board, on September 24, 1996 appellant, then a 51-year-old letter carrier, submitted

an occupational disease claim alleging an emotional condition due to unfair treatment by the postmaster regarding an altercation he had with a coworker on September 20, 1996 while in the performance of duty. Appellant submitted medical evidence and a narrative statement in support of his claim. Appellant alleged that while he was casing mail at his duty station, a coworker, Ramon Barbosa, walked over to him. Appellant stated that when he turned toward Mr. Barbosa, he saw his fist, so he reacted by pushing Mr. Barbosa's fist with his right hand. He stated that the postmaster, Pedro R. Soto, noticed the altercation and came over and had to restrain Mr. Barbosa, who had become very angry and upset. Appellant stated that while he reported the incident to the police and to the postal inspector, no one came. Appellant alleged that the postmaster unfairly accused him of starting the incident and of assaulting Mr. Barbosa. Appellant stopped work on September 20, 1996 and returned to work on September 26, 1996.

By letter dated October 1, 1996, Mr. Soto controverted appellant's claim. Mr. Soto explained that on September 20, 1996 he witnessed an argument between appellant and Mr. Barbosa over some misplaced mail. He said that Mr. Barbosa pointed his finger at appellant while talking to him in an angry tone of voice. Appellant then grabbed Mr. Barbosa's hand and pushed him backwards, telling him not to point his finger at him. Mr. Soto stated that he first called Mr. Barbosa into his office and gave him an official talk on workplace violence. After Mr. Barbosa returned to his station, Mr. Soto asked appellant into his office. He stated that appellant laughed and asked if it was in regard to his altercation with Mr. Barbosa, stating that nothing had happened and that it was just a little argument. Mr. Soto stated that he gave appellant the same official talk on workplace violence and added that if he were to assault Mr. Barbosa the charges would be more serious. Mr. Soto stated that appellant became angry and started pointing his finger at him. When Mr. Soto asked appellant to stop pointing his finger, appellant stated that he had done so on purpose to see how the postmaster liked it. Mr. Soto stated that appellant grew increasingly agitated, and asked for a copy of Mr. Soto's notes regarding the incident. Mr. Soto stated that when he refused to hand over his notes, appellant grabbed the telephone and called the police, who did not respond. Mr. Soto stated that the following day, appellant did not report to work but sent in a medical excuse claiming stress and subsequently, submitted a claim for occupational disease.

In a decision dated March 31, 1997, the Office denied appellant's claim under file number 02-0719702 on the grounds that he failed to establish any compensable factors of employment. On April 17, 1998 appellant requested reconsideration of the Office's March 31, 1997 decision and submitted additional arguments and evidence in support of his request. In a decision dated May 20, 1998, the Office denied appellant's request for reconsideration on the grounds that appellant's request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

By letter dated August 15, 1998, but received by the Office on July 19, 1999 appellant requested reconsideration of the May 20, 1998 decision and submitted additional evidence in support of his request. In a decision dated August 30, 1999, the Office found that appellant's request for reconsideration of its decision on claim number 02-0719702 was not timely filed and did not present clear evidence of error.

Claim number 02-0757195 was previously before the Board in Docket No. 02-50. The Board reviewed the Office's June 20, 2001 decision, which denied appellant's August 14, 1998

claim for an employment-related emotional condition.¹ In a decision dated June 3, 2002, the Board affirmed the Office's June 3, 2001 decision. The facts of the case are set forth in the June 3, 2002 decision and are hereby incorporated by reference.

By letter dated May 14, 2003 and received by the Office on May 20, 2003, appellant requested reconsideration of the Office's prior decisions on both claim number 02-0757195 and claim number 02-719702. In a follow-up letter dated July 22, 2003, received by the Office on July 29, 2003 appellant reiterated his request for reconsideration.

In a decision dated September 3, 2003, the Office refused to reopen appellant's claim under file number 02-0757195 for further merit review on the grounds that appellant's request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

ANALYSIS -- ISSUE 1

In his letter requesting reconsideration, appellant stated that after he had received a copy of his record file from the Office, he realized that some of his evidence had never been considered by the Office. However, he did not identify the evidence, to which he was referring and did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). In addition, while appellant's request for reconsideration stated that he had new evidence, which could change the outcome of his claim, no medical or factual evidence was received prior to the issuance of the Office's

¹ On August 14, 1998, appellant, then a 53-year-old retired letter carrier, filed a claim for occupational disease alleging that he developed delusional and depressive disorders due to adverse treatment and discrimination by management. In a decision dated September 27, 1999, the Office denied appellant's claim on the grounds that he failed to identify the incidents or conditions upon which his claim was based. The Office noted that while appellant had submitted a narrative statement and supporting documents, the same or similar information had been previously submitted in support of appellant's prior emotional condition claim, number 02-0719702 and had been previously considered by the Office in its merit decision dated March 31, 1997 and in its decisions denying further review dated May 20, 1998 and August 30, 1999. Following an oral hearing held at appellant's request, in a decision dated June 20, 2001, an Office hearing representative affirmed the Office's September 27, 1999 decision.

² 20 C.F.R. § 10.606(b).

September 3, 2003 decision. Consequently, appellant is not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(2).

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office. The Office properly refused to reopen appellant's claim for a review on the merits.

LEGAL PRECEDENT -- ISSUE 2

The Office, through its regulation, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³ The Office will not review a decision denying or terminating benefits unless the application for review is filed within one year of the date of that decision.⁴ When an application for review is untimely, the Office takes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.⁵

ANALYSIS -- ISSUE 2

As noted above, the Board, having reviewed the case record submitted by the Office, finds that the record is incomplete, as it does not contain a copy of the Office's decision dated September 3, 2003, pertaining to appellant's request for reconsideration under file number 02-0719702. As all of the records pertaining to appellant's claim are necessary for complete consideration and adjudication of the issues raised on appeal, the Board, therefore, finds that portion of the instant appeal docketed as 04-261, which pertains to appellant's claim number 02-0719702 is not in posture for a decision as the Board is unable to render an informed adjudication of the case.

CONCLUSION

The Board finds that appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office. The Office did not abuse its discretion by refusing to reopen appellant's claim number 02-757195 for review of the merits on September 3, 2003. With respect to appellant's claim number 02-719702, the case will be remanded for reconstruction of the record to include a complete copy of the Office's September 3, 2003 decision, pertaining to claim number 02-719702. After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.138(b)(2); *see also Claudio Vazquez*, 52 ECAB 496 (2001).

⁵ *See Gladys Mercado*, 52 ECAB 255 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2003 on claim number 02-757195 is affirmed and the separate decision of the Office dated September 3, 2003 on claim number 02-719702 is set aside.

Issued: April 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member