

FACTUAL HISTORY

This case has previously been before the Board. Appellant, a revenue officer, filed a claim for an emotional condition, allegedly due to three separate incidents with irate taxpayers that occurred on April 17, 1990, May 10, 1991 and April 30, 1992. The Office initially denied the claim. However, an Office hearing representative found that the April 17, 1990 and May 10, 1991 incidents represented compensable employment factors. The hearing representative remanded the claim for additional development of the medical record. After further development, the Office denied the claim based on appellant's failure to establish that her claimed emotional condition was causally related to the accepted employment factors. Appellant appealed the denial of her claim to the Board. In a decision dated May 10, 2002, the Board set aside in part the Office's February 6, 2001 decision.² The Board found that the incidents of April 17, 1990 and May 10, 1991 represented compensable employment factors. However, on the issue of causal relationship, the Board found that there was an unresolved conflict of medical opinion. The Board remanded the claim to the Office to refer appellant to an impartial medical examiner to resolve the noted conflict.³

The Office referred appellant to Dr. Robert B. Olsen, a Board-certified psychiatrist, for an impartial medical evaluation. The doctor examined appellant on September 12, 2002 and diagnosed a post-traumatic stress disorder. Dr. Olsen attributed appellant's condition to the accepted May 10, 1991 employment incident. He also reported that, while appellant had occasional symptoms, they did not rise to a level of clinical significance. Dr. Olsen found that appellant's post-traumatic stress disorder was in remission and that her disorder resolved some time between her previous psychiatric evaluation on November 22, 1995 and the current examination.

On October 7, 2002 the Office accepted appellant's claim for post-traumatic stress disorder. The Office found that her emotional condition had resolved no later than September 12, 2002, the date of Dr. Olsen's examination.

On October 15, 2002 appellant filed a claim for compensation from February 1993 to the present. On November 29, 2002 the Office issued a check for \$50,744.25 for the period February 21, 1993 to December 31, 1994. On May 13, 2003 the Office issued a check for \$28,598.35 for the period February 21, 1993 to June 14, 1995. The Office issued three checks on May 30, 2003 totaling \$184,648.65 for the period June 15, 1995 through September 12, 2002. On July 22, 2003 the Office issued a decision explaining how it computed appellant's entitlement to benefits for the period February 21, 1993 to September 12, 2002.

On June 16, 2003 appellant requested that the employing establishment reinstate her to the position she formerly held or grant her priority consideration for another position. She explained that the Office had determined that she was not entitled to compensation after September 12, 2002.

² Docket No. 01-1479.

³ The Board's May 10, 2002 decision is incorporated herein by reference.

In a letter dated July 23, 2003, the Office addressed a number of questions appellant had raised in prior correspondence; one of which was her right to reinstatement to her former position with the employing establishment. The Office explained that because of the timing of her recovery it did not appear that she was entitled to reinstatement. However, the Office advised that this was a matter to be addressed by the employing establishment as the Office was not the agency responsible for determining entitlement to reinstatement.

By letter dated August 21, 2003, the employing establishment advised appellant that she was not eligible for priority consideration for reemployment because she did not meet the time limit for applying for reemployment. The employing establishment indicated that appellant should have submitted her request within 30 days of September 12, 2002; which was the date her compensation ceased. As appellant did not request reinstatement until June 16, 2003, more than 9 months after the cessation of compensation, she was not eligible for priority consideration with the employing establishment. The letter also advised appellant of her appeal rights with the Merit Systems Protection Board.

On September 29, 2003 appellant's counsel requested reconsideration of the Office's October 7, 2002 decision. Counsel submitted a copy of the August 21, 2003 letter from the employing establishment concerning appellant's eligibility for priority consideration for reemployment. Counsel argued that the Office should have awarded continuing compensation beyond September 12, 2002, because appellant required therapy beyond that date. Counsel also argued that the Office failed to properly inform appellant of her employment restoration rights when it terminated compensation effective September 12, 2002. By decision dated December 2, 2003, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.⁴ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).

ANALYSIS

Appellant's September 29, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Although claimant's counsel argued that appellant required ongoing therapy after September 12, 2002 and was entitled to additional compensation, counsel did not submit any medical evidence in support of this contention. Dr. Olsen noted in his September 12, 2002 report that appellant had stopped treatments with her psychologist in "1996 or 1997." While Dr. Olsen indicated that additional therapy would be helpful should appellant elect to return to her former position, the doctor's recommendation was prophylactic in nature. He did not find appellant disabled on or after September 12, 2002.

Counsel also argued that the Office's October 7, 2002 decision terminated compensation without providing proper notice of appellant's employment restoration rights under 5 U.S.C. § 8151(b).⁷ The Office of Personnel Management regulations implementing section 8151 of the Act provides that an employee whose full recovery takes longer than one year from the date eligibility for compensation began is entitled to priority consideration for restoration to the position she left or an equivalent one provided she applies for reappointment within 30 days of the cessation of compensation.⁸ The October 7, 2002 decision advised appellant that her claim had been accepted and further informed her that the medical evidence established that her condition had resolved no later than September 12, 2002. While the October 7, 2002 decision did not include notification of appellant's employment restoration rights under 5 U.S.C. § 8151, counsel has not demonstrated how the Office erroneously applied or interpreted a specific point of law. As the Office noted in its July 23, 2003 correspondence, the question of appellant's restoration rights is an issue for the employing establishment or the Office of Personnel Management as the Office lacks the authority to order priority consideration.⁹ Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁰

With respect to the third requirement, that the information submitted constitute relevant and pertinent new evidence not previously considered by the Office, appellant submitted the August 21, 2003 letter from the employing establishment concerning eligibility for priority consideration for reemployment. This information does not pertain to appellant's accepted condition or continuing disability beyond September 12, 2002. As such, the August 21, 2003

⁷ This section of the Act provides an injured employee with the right to resume her former or an equivalent position if she overcomes her injury or disability within one year after the date of commencement of compensation. 5 U.S.C. § 8151(b)(1). For an employee who recovers from her injury or disability more than one year after the date of commencement of compensation, the employing establishment must make all reasonable efforts to place and accord priority to placing the employee in her former or equivalent position. 5 U.S.C. § 8151(b)(2).

⁸ 5 C.F.R. § 353.301(b).

⁹ See *Pedro Beltran*, 44 ECAB 222 (1992); *Charles J. McCuiston*, 37 ECAB 193 (1985) (claims for job reinstatement are not within the scope of the Act).

¹⁰ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii) (1999).

letter is not relevant to the October 7, 2002 decision and is insufficient to warrant reopening the claim for merit review. As appellant did not submit any relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹¹

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied the September 29, 2003 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's September 29, 2003 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹¹ 20 C.F.R. § 10.608(b)(2)(iii) (1999).