United States Department of Labor
Employees' Compensation Appeals Board

DEBORAH J. MALCOM, Appellant	)	
and	)	**Docket No. 04-1259**
	)	**Issued: August 30, 2004**
DEPARTMENT OF THE AIR FORCE, ROBBINS AIR FORCE BASE, GA, Employer	)	

Appearances:
Deborah J. Malcom, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 24, 2004, denying her request for reconsideration of a March 10, 2003 Office decision without reviewing the merits of the claim. Pursuant to 20 C.F.R. § 501.3(d)(2), the Board's jurisdiction is limited to review of decisions issued within one year of the filing of the appeal. Accordingly, the Board's jurisdiction on this appeal is limited to the denial of reconsideration issue.

ISSUE

The issue is whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

On March 17, 2001 appellant, then a 49-year-old electronics mechanic, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained an emotional condition causally related to her federal employment. The Office accepted that a

compensable work factor occurred on April 17, 2000 when appellant was counseled by her supervisor as to her work performance and the claim was accepted for major depression, single episode.

On October 31, 2002 appellant filed a notice of recurrence of disability (Form CA-2a), reporting the date of the recurrence of disability as September 3, 2002 and the date she stopped working as September 13, 2002. Appellant indicated in a narrative statement that she felt stress at having to complete a security clearance on time in September 2002.

By decision dated March 10, 2003, the Office denied the claim for a recurrence of disability. The Office stated that, if appellant was alleging that her disability was related to new incidents at work, an appropriate new claim should be filed.

In a letter dated March 8, 2004, appellant requested reconsideration of the March 10, 2003 decision. Appellant stated that after April 17, 2000 she became increasingly depressed until a work stoppage was necessary. She cited a number of cases from other jurisdictions with respect to employment injuries and burden of proof.[1] Appellant also submitted a form report (CA-20), dated October 15, 2003, from attending psychiatrist, Dr. Paul Coplin, who reported the date of injury as September 3, 2002, and diagnosed "major depressive disorder, recurrent, moderate." He checked a box "yes" as to causal relationship with employment, stating "withdrawal of the accommodation of frequent absence during the period of resurfacing depression." Dr. Coplin indicated that appellant was disabled from September 16 to December 3, 2002.

By decision dated March 24, 2004, the Office denied the request for reconsideration without merit review of the claim. The Office reviewed the evidence and found that appellant had not submitted any new and relevant evidence or argument sufficient to warrant reopening the claim for merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office's 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 specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[3] Section 10.608(b) states that any application for review that does not

[1] Appellant cited one Board case, *William T. Abernathy*, 48 ECAB 687 (1997) for the proposition that a finding of error or abuse in an investigative or disciplinary proceeding does not require an affirmative finding of error by an administrative agency.

[2] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[3] 20 C.F.R. § 10.606(b)(2).

meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[4]

ANALYSIS

In the present case, the underlying merit issue was the denial of a recurrence of disability in September 2002. Appellant's request for reconsideration contains citations to case law, primarily from other administrative agencies, that are not relevant to the issue presented under the Act. In its merit decision dated March 10, 2003, the Office advised appellant that, if she was claiming that her disability was causally related to new employment incidents, she should file a new claim.[5] This is consistent with Office procedures regarding exposure to new employment incidents.[6] To the extent that appellant is alleging that the Office erroneously applied or interpreted a point of law, she has not submitted relevant evidence or argument in this regard.

With respect to the medical evidence, the Board notes that the record contains treatment notes from a psychiatric health service. The notes are generally illegible and it is not clear whether any were prepared by Dr. Coplin or other physicians under the Act.[7] Appellant did submit an October 15, 2003 Form CA-20 from Dr. Coplin, but this report cannot be considered new and relevant evidence with respect to the recurrence of disability issue. Dr. Coplin does not acknowledge the prior injury or provide an opinion that any disability was related to the accepted condition. He reports an injury on September 3, 2002 and discusses the employing establishment's withdrawal of accommodation for frequent absences during the resurfacing of appellant's depression. An allegation of withdrawal of accommodation for absences was not the accepted work factor, and it appears that Dr. Coplin is referring to an allegation of incidents after the acceptance of the claim.

The Board finds that appellant did not submit new and relevant evidence on the recurrence of disability issue presented, did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered. Since appellant did not meet the requirements of section 10.606(b)(2), she is not entitled to a merit review.

The Board finds that the March 24, 2004 decision properly found that the evidence was insufficient to warrant merit review under section 10.606. It is noted that in discussing the requirements for entitlement to a merit review the Office decision improperly stated that the evidence would have to be "of sufficient weight to require further development or outright modification/vacation of the prior decision." The regulation does not require that the evidence be sufficient to warrant further development; it requires that the evidence be new, relevant and

[4] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

[5] According to the Office, appellant did file a new claim.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997) provides that in emotional stress cases a new claim should always be required if there are allegations of new work incidents.

[7] *See* 5 U.S.C. § 8101(2). In order to be of probative medical value, the report must be from a physician under the Act. *See, e.g., Debbie J. Hobbs*, 43 ECAB 135, 145 (1991).

pertinent to the issue. The March 24, 2004 decision did not, however, deny the request for reconsideration on the grounds that it was not sufficient to require further development. The Office reviewed the evidence and found that appellant did not submit new and relevant evidence or legal argument, or show that the Office erroneously applied or interpreted a point of law. The Board finds that the Office properly determined that appellant was not entitled to a merit review in this case.[8]

CONCLUSION

The Board finds that appellant's March 8, 2004 request for reconsideration did not meet the requirements of section 10.606(b)(2) and therefore the Office properly determined that appellant was not entitled to a merit review of her claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 24, 2004 is affirmed.

Issued: August 30, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] The decision also contains a brief reference to the lack of "clear evidence of error," which is appropriate standard for an untimely reconsideration request. There is no indication that the Office reviewed the case under the clear evidence of error standard.