

In an April 26, 1999 letter, appellant requested reconsideration of the Office's May 5, 1998 decision. By letter dated March 6, 2000, the Office requested that he provide additional factual and medical evidence as it appeared that he was expanding his claim to include constant stress/harassment as a contributing factor to his heart attack. Appellant submitted an April 5, 2000 supplemental statement in which he indicated that he was not changing his original statement on the traumatic injury claim form that the specific duties performed on February 13, 1998 contributed to his heart condition. He additionally stated that job-related stress could have also been a contributing factor. Additional medical evidence was submitted.

By decision dated August 7, 2000, the Office denied modification of its previous decision. The Office stated that appellant's claim would be pursued as a traumatic injury as he had alleged that the specific duties performed on February 13, 1998 contributed to his condition. The Office further advised appellant that he should file a Form CA-2 and pursue a claim for occupational disease if he believed that his condition was the result of stress and harassment and the physical demands of his work over a period of more than one work shift.

In an August 3, 2001 letter, appellant requested reconsideration of the Office's August 7, 2000 decision and submitted additional evidence.

By decision dated September 18, 2001, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the August 7, 2000 decision.

In a September 16, 2002 letter, appellant requested reconsideration and advised that he submitted a CA-2 form to expand his claim to include the job stress and harassment in addition to his previously claimed factors. Additional evidence was submitted.

By decision dated December 18, 2002, the Office denied modification of its September 18, 2001 decision. The Office specifically stated, "[t]his decision [was] neither addressing nor making any formal findings regarding any alleged occupational work stressors but [was] only addressing the issue of the traumatic injury of February 13, 1998." Appellant was again advised that a notice of occupational injury should be filed if he was of the opinion that specific work factors encountered over a period of time was related to the claimed condition.

In a December 16, 2003 letter, appellant requested reconsideration of the Office's December 18, 2002 decision. He advised that he felt that the strenuous physical activity, exertion, heavy lifting, carrying, cold temperature, harassment and stress were all contributing factors to his heart attack. Appellant submitted copies of evidence previously of record, which included: a claim for an occupational injury which only he and not the employing establishment had completed; witness statements submitted by appellant's coworkers which advised "[o]ver several months during 1997 through 1998 I have witnessed on many occasions loud verbal harassment on the workroom floor directed at rural letter carrier [appellant] on RRI Matteson, IL;" and a copy of a page taken from an Office publication. Evidence not previously of record included: a copy of a February 14, 1992 postal bulletin entitled "Joint Statement on Violence and Behavior in the Workplace" and two photocopied pictures, including one of a car and one of postal bins giving an example of mail volume on a route.

By decision dated March 15, 2004, the Office denied appellant's request for reconsideration finding that he failed to submit either new and relevant evidence or legal contentions not previously considered.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (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.¹ 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.²

ANALYSIS

Appellant's December 16, 2003 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Although the Board notes that appellant advised that he felt that the strenuous physical activity, exertion, heavy lifting, carrying, cold temperature, harassment and stress were all contributing factors to his heart attack, appellant had been previously informed by the Office that a notice of occupational injury should be filed if he was of the opinion that specific work factors encountered over a period of time was related to the claimed condition. Consequently, he 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).³

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted numerous evidence which was of record and previously considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening the case.⁴ Appellant has also submitted a February 14, 1992 postal bulletin and copies of pictures to provide an example of mail volume on a route. This evidence, although new, fails to raise a substantive legal question nor is it relevant factual or medical evidence relative to the issue of whether the specific duties appellant performed on February 13, 1998 contributed to his condition. Inasmuch as appellant did not submit any "relevant and pertinent

¹ 20 C.F.R. § 10.606(b)(2).

² 20 C.F.R. § 10.608(b).

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

⁴ *Denis M. Dupor*, 51 ECAB 482 (2000). With respect to the occupational claim form appellant filed, the Board notes that he should process the claim through the employing establishment if he wishes to pursue such a claim. Any claim regarding whether appellant has established an occupational disease in the performance of duty is not before the Board on the present appeal.

new evidence,” he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).⁵

CONCLUSION

The Board finds that the Office properly refused to reopen appellant’s claim for further review of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2004 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.608(b)(2)(iii).