

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

LOUIS WRIGHT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Dix, NJ, Employer**

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**Docket No. 02-925
Issued: January 20, 2004**

Appearances:
Louis Wright, pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument November 4, 2003

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 29, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 14, 2001 which denied his request for reconsideration. Because more than one year has elapsed between the last merit decision dated June 21, 2000 and the filing of this appeal on January 29, 2002, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration on February 14, 2001.

FACTUAL HISTORY

On December 23, 1997 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that he sustained an aggravation of his nervous condition and psychosis due to factors of his federal employment. Appellant stopped work on August 5, 1997.

The Office denied appellant's claim by decision dated July 13, 1998 on the grounds that he had not established that he sustained an injury in the performance of duty. The Office determined that appellant had not established any compensable factors of employment.

On July 20, 1998 appellant requested a hearing on his claim. At the hearing, held on February 8, 1999, appellant contended that the employing establishment erred in failing to accommodate his work restrictions due to his preexisting service-related psychiatric condition. Appellant further contended that his supervisors harassed him and called him names and that the employing establishment committed error and abuse in its handling of disciplinary actions. In a decision dated April 1, 1999, the hearing representative affirmed the Office's July 13, 1998 decision. The hearing representative found that appellant had not factually established his allegations of harassment or error and abuse by the employing establishment.

By letter dated March 19, 2000, appellant requested reconsideration and submitted additional factual and medical evidence. In his request for reconsideration, appellant contended that the Office should accept his allegation that a manager referred to him inappropriately as factual because the employing establishment did not respond to his allegations.

In a decision dated June 21, 2000, the Office denied modification of its prior decision. The Office found that appellant had not established error or abuse on behalf of the employing establishment.

Appellant again requested reconsideration on January 26, 2001. In support of his request, appellant resubmitted evidence already of record and argued that the Office should accept his allegation of abuse by a supervisor in calling him a "sorry excuse for [a] carrier." On February 14, 2001 the Office denied merit review of the prior decision on the grounds that the evidence and argument submitted by appellant were insufficient to warrant reopening his claim on the merits.

LEGAL PRECEDENT

Section 10.606 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 specific point of law; or (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.¹ Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.²

¹ 20 C.F.R. § 10.606(b)(2).

² 20 C.F.R. § 10.608(b).

ANALYSIS

In support of his request for reconsideration, appellant argued that the Office should accept his statement as factual that a supervisor referred to him in a derogatory manner in view of the failure of the employing establishment to respond to his contention. Appellant related that he had submitted evidence supporting his allegation in the form of a statement from his representative verifying that an Equal Employment Opportunity counselor remembered that appellant received a verbal apology resulting from the incident. Appellant, however, previously raised this argument before the Office in his March 19, 2000 request for reconsideration. As appellant's argument was previously considered by the Office, it does not constitute a basis for reopening his case for merit review.

Appellant further submitted a copy of two pages from the hearing transcript of February 8, 1999, a statement from his representative dated February 10, 1999, a copy of the June 21, 2000 memorandum to the Director, a medical report dated February 17, 2000, chart notes dated April 1, 1998 and a statement from a coworker dated November 30, 1999. However, this evidence duplicated that already contained in the case record and previously considered by the Office. The Board has held that the submission of evidence which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.³

With his reconsideration request, appellant also submitted a statement from his representative dated June 27, 2000 in which the representative paraphrased his letter to the hearing representative dated February 10, 1999. The June 27, 2000 statement from appellant's representative is substantially similar to the February 10, 1999 letter previously considered by the Office and, consequently, is cumulative in nature and does not constitute relevant new evidence.⁴

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 evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly denied merit review of appellant's claim on February 14, 2001.

³ *James E. Norris*, 52 ECAB 93 (2000).

⁴ *See Severiano Marquez*, 41 ECAB 637 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member