

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

JAMES W. SCOTT, Appellant)	
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and)	
)	
GENERAL SERVICES ADMINISTRATION, FEDERAL PROTECTIVE SERVICES, CRIMINAL INVESTIGATION SECTION, San Francisco, CA, Employer)	Docket No. 04-498 Issued: July 6, 2004
)	
)	

Appearances:
James W. Scott, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 19, 2003 which denied his request for reconsideration. Because more than one year has elapsed between the last merit decision of November 30, 2000 and the filing of this appeal on December 17, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for further review of the merits.

FACTUAL HISTORY

Appellant, a 45-year-old criminal investigator, filed an occupational disease claim on August 23, 2000 alleging that on July 28, 2000 he developed an adjustment disorder due to factors of his federal employment. Appellant stated that on July 28, 2000 he was relieved of duty and his firearm confiscated in retaliation for whistle blower activities.

By decision dated November 30, 2000, the Office denied appellant's claim, finding that he alleged that he developed an adjustment disorder due to events which occurred during one duty shift, a traumatic injury rather than an occupational disease. The Office found that appellant was not relieved of duty, but was instead detailed to another position due to physical restrictions from a separate work-related injury. The Office found that this detail was not retaliatory, but an administrative action. The Office concluded that appellant had not established error or abuse in the administrative action and that he had not established a compensable factor of employment.

Appellant requested reconsideration on December 29, 2000. By decision dated January 11, 2001, the Office denied appellant's request.

Appellant requested reconsideration on November 26, 2001, and submitted additional factual and medical evidence in support of his claim. In a letter dated April 26, 2002, appellant noted his November 26, 2001 reconsideration request. By decision dated September 19, 2003, the Office denied appellant's request for review of the merits.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act¹ the Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.²

ANALYSIS

In this case, the Office initially denied appellant's claim for an emotional condition of adjustment disorder resulting from the events of July 28, 2000 by decision dated November 30, 2000. The Office considered narrative statements submitted by appellant and the employing establishment and concluded that appellant failed to establish that he was relieved of duty; that he failed to establish that the action of the employing establishment was in retaliation for whistle blower activities; that he failed to establish error or abuse in the administrative action of detailing him to the position of quality assurance specialist; that he failed to establish error or

¹ 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, "the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application" 5 U.S.C. § 8128(a).

² 20 C.F.R. §§ 10.609(a) and 10.606(b).

abuse in the administrative action of requiring the surrender of his sidearm; and that he failed to establish that his coworker, Officer Maldonado, placed his hand on the pistol grip of his firearm when appellant was asked to surrender his weapon. Therefore, the underlying issue in this case is whether appellant has established a compensable factor of employment occurring on July 28, 2000, as alleged.

In support of his November 26, 2001 request for reconsideration, appellant argued that the events of July 28, 2000 occurred as retaliatory disciplinary actions rather than administrative actions. As the Office noted in the November 30, 2000 decision, this is not a new legal argument and is not sufficient to require the Office to reopen appellant's claim for reconsideration of the merits.

Appellant also submitted additional factual and medical evidence with his request for reconsideration. The majority of the factual information pertains to alleged employment factors which either predate or postdate, July 28, 2000, the only date in question in this traumatic injury claim.³ As the various employment-related activities did not occur on July 28, 2000, evidence regarding these events is not relevant to this issue on appeal, whether appellant has established that he sustained a traumatic emotional injury due to the actions of the employing establishment on that day.

Appellant submitted a narrative statement dated January 11, 2001, entitled *Synopsis*. He also resubmitted a narrative describing the events of July 28, 2000 previously reviewed by the Office in the November 30, 2000 decision, as well as a copy of the employing establishment response to his allegations. Appellant submitted a substantially duplicative narrative statement dated July 28, 2000 which he had originally provided to his attorney.⁴ The January 11, 2001 synopsis and July 28, 2000 narrative statement do not provide any new relevant evidence. The Office reviewed appellant's description of the events of July 28, 2000 and the employing establishment's response in reaching the November 30, 2000 decision.

Appellant also submitted an additional medical report dated January 23, 2001 as well as his factual review of this report. This medical evidence is not relevant to the issue for which appellant's claim was denied, the failure to establish a compensable factor of employment. As the Office found that appellant failed to establish a compensable factor of employment occurring on July 28, 2000, any medical evidence regarding a condition arising from the events of that date would be relevant only to the extent that the physician could substantiate that an alleged employment factor actually occurred as alleged. As the medical examination occurred on June 15 and July 7, 1999, more than one year prior to the alleged traumatic injury on July 28, 2000, the factual assumptions in this report are not relevant to appellant's claim and are not sufficient to require the Office to reopen appellant's claim for reconsideration of the merits.

³ The Office noted that appellant had previously filed a claim for an emotional condition arising from his whistle blowing activities. If appellant feels that he developed an emotional condition due to events occurring after July 28, 2000, he may file a separate claim for an occupational disease. However, the Board's review is limited on appeal to considering the final decision of the Office which is restricted to a traumatic injury claim arising on July 28, 2000. 20 C.F.R. § 501.2(c).

⁴ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material that is repetitious or duplicative of that already in the record does not constitute a basis for reopening a claim).

Appellant submitted copies of both criminal investigator and quality assurance specialist position descriptions. He submitted a copy of the notification of personnel action, the July 27, 2000 document entitled *Opportunity to Provide Medical Information*, from the employing establishment and a December 12, 2000 document from the employing establishment requesting additional medical evidence regarding appellant's ability to perform the full duties of his criminal investigator position. While these documents have some connection to the events of July 28, 2000, the documents are not relevant to the issue for which the Office denied appellant's claim, the failure to establish error or abuse in the administrative action of detailing appellant to a different position due to medical restrictions. None of the new evidence submitted addresses the central issue of establishing a compensable factor of employment in any of the actions of the employing establishment on July 28, 2000. As appellant has failed to submit either relevant and pertinent new evidence or a relevant legal argument not previously considered by the Office, the Office properly declined to reopen appellant's claim for further consideration of the merits.

CONCLUSION

The Board finds that appellant failed to submit relevant new evidence, a relevant legal argument not previously considered by the Office or evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law and that therefore the Office properly refused to reopen appellant's claim for further consideration of the merits of his claim in the September 19, 2003 decision.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member