

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

TIMOTHY L. BASCOM, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, FL, Employer**

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**Docket No. 04-652
Issued: May 12, 2004**

Appearances:
Timothy L. Bascom, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 12, 2004 appellant filed a timely appeal from the August 18, 2003 decision of the Office of Workers' Compensation Programs denying his request for reconsideration without a review of the merits. Because more than one year has elapsed between the last merit decision dated November 27, 2002 and the filing of this appeal on January 12, 2004, 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 denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 19, 2000 appellant, then a 38-year-old mail handler, filed an occupational disease claim alleging that on July 18, 2000 he first became aware of his stress. Appellant further alleged that on August 8, 2000 he first realized that his stress was caused or aggravated

by his employment. Appellant contended that management created a hostile work environment which caused his stress, anxiety and financial hardship. He stated that a combination of the above made him seek medical attention. Appellant submitted factual and medical evidence in support of his claim.

In response to the Office's January 8, 2001 letter requesting additional information, appellant submitted statements regarding the personal and work incidents that caused his emotional condition and medical documents supportive of his claim. The employing establishment submitted statements disputing appellant's allegations that it had improperly taken actions against him.

By decision dated April 17, 2001, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. The Office determined that appellant failed to establish that his emotional condition was caused by compensable factors of employment. In an April 30, 2001 letter, appellant requested an oral hearing before an Office hearing representative.

By decision dated April 15, 2002, the hearing representative affirmed the Office's April 17, 2001 decision. The hearing representative found that appellant failed to establish that his emotional condition was caused by compensable factors of employment. Appellant requested reconsideration in an August 9, 2002 letter.

On November 27, 2002 the Office issued a decision denying appellant's request for modification based on a merit review of the claim. The Office found that appellant had failed to submit any new evidence to support that he sustained an injury caused by his regularly assigned work duties as a mail handler.

Subsequent to the issuance of its November 27, 2002 decision, the Office received an April 7, 2003 report of Philip R. Yates, Ph.D., a licensed clinical psychologist. In this report, he noted incidents related to him by appellant that were responsible for his emotional condition. Dr. Yates stated that appellant was questioned by an employing establishment inspector about potentially taking credit cards from the mail, but he denied doing so. He further stated that appellant was questioned about carrying a firearm, but also denied this. Appellant told Dr. Yates that, as a result of the questioning, he was put out of the building around March 2000. Appellant also told him that he was placed on administrative leave for one month and that he had returned to work as a mail handler. Dr. Yates reported that appellant was recently accused of falsifying a signature on a leave form. Appellant stated that he had become frustrated over the perceived maltreatment, financial losses and in his view, falsehoods about himself. Dr. Yates noted appellant's psychiatric treatment and his findings on psychological examination and testing. He stated that no history had been made available to him to establish any causality or correlative (proximal) etiology for the symptoms and difficulties identified on testing. On Axis I Dr. Yates diagnosed acute stress disorder, unspecified paranoid schizophrenia, delusional paranoid disorder, organic personality syndrome and intermittent explosive disorder. On Axis II he diagnosed paranoid personality disorder.

In an undated letter received by the Office on July 16, 2003, appellant requested reconsideration. In this letter, appellant asked the Office what it meant by its statement that

“[t]he evidence of record still supports that you were disciplined by the employing establishment for your own misbehavior both on and off the job?”¹ Appellant also asked the Office why none of his witnesses, which included a union steward, were questioned about the abuse he received from management at the employing establishment and he requested that these witnesses be heard. Appellant concluded that his condition had become worse and that he was trying to deal with and move beyond what had happened. Along with his request, appellant submitted an undated report of Lloyd Coursey, a licensed social worker, indicating that he sustained an emotional condition due to job stress over conflicts about clock rings. He stated that, for eight months appellant reported perfect clock rings but currently he was being accused of not clocking out for lunch which he denied. He also stated that appellant experienced increased symptoms of anxiety and depression including, reduced sleep and worry. Mr. Coursey recommended that appellant take time off from work starting February 7, 2003 and return to work on February 11, 2003, which would allow him time to regain his emotional process and energy.

In an April 4, 2003 report, Mr. Coursey stated that appellant was seen on that date and he continued to experience symptoms of anxiety and depression which tended to increase when stressful events occurred within the work environment. He cited examples of being accused of missing medical appointments that he was not made aware of. Mr. Coursey recommended that appellant continue to use leave under the Family Medical Leave Act (FMLA) for periods of increased job stress, outpatient treatment and medical management. He stated that, if stress built up, appellant should consider two weeks in a partial hospital program.

Mr. Coursey’s May 16, 2003 report revealed that appellant experienced increased stress and anxiety when his supervisor asked him questions about a pending legal action. He stated that there had always been questions about his “last chance agreement” and that all of the above increased appellant’s stress and anxiety. He further stated that the increased stress was responsible for appellant’s need to utilize the FMLA. He noted that appellant had been on leave under FMLA from May 9 through 16, 2003 and that he could return to work on May 19, 2003, but that he may need to continue to utilize leave under FMLA when stress builds.

In his June 26, 2003 report, Mr. Coursey provided a history of the treatment of his emotional condition. Mr. Coursey stated that appellant had anxiety and depression in reaction to job stress. He noted three examples of such stress which included the most recent incident where appellant was questioned about a discrepancy involving “clock rings.” He stated that the problem arose due to inaccurate information being placed in the computer system and that appellant’s anxiety increased with an ongoing need to find problems with his job performance. Mr. Coursey concluded by noting appellant’s treatment. Lastly, appellant submitted Dr. Yates’ April 7, 2003 medical report.

In an August 18, 2003 decision, the Office denied appellant’s request for reconsideration without a review of the merits on the grounds that the evidence submitted was not relevant, and thus, insufficient to warrant modification of its prior decision.

¹ In its November 27, 2002 decision, the Office found that appellant failed to establish that the employing establishment committed error or abuse in disciplining him for his misbehavior on and off the job.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² vests the Office with discretionary authority to determine whether it will review an award for or against compensation.³ Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.⁴

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁵ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.⁶

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁷

ANALYSIS

In his undated request for reconsideration, appellant asked the Office to explain its finding that the evidence of record established that he was disciplined by the employing establishment for his behavior on and off the job. Appellant's argument constitutes a vague disagreement with the Office's assessment of the evidence. Appellant also requested that the Office explain why none of his witnesses were questioned about the abuse he received from the employing establishment and requested that they be heard. The record does not indicate that appellant previously requested the Office to issue subpoenas to his witnesses and that such request was denied. Accordingly, the Board finds that these arguments do not constitute a basis for reopening appellant's claim for merit review.

In support of his request for reconsideration, appellant submitted the April 7, 2003 report of Dr. Yates, a licensed clinical psychologist,⁸ finding that he suffered from an emotional

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8128(a) (“[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”).

⁴ *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

⁵ 20 C.F.R. § 10.608(a) (1999).

⁶ 20 C.F.R. § 10.606(b)(1)-(2).

⁷ 20 C.F.R. § 10.608(b).

⁸ Under section 8101(2) of the Act, a licensed clinical psychologist qualifies as a physician. 5 U.S.C. § 8101(2).

condition, but there was no evidence establishing a causal relationship between his emotional condition and the identified incidents. Dr. Yates' report is irrelevant as the Office found that appellant failed to establish a compensable factor of employment, and thus, it is not necessary to address the medical evidence in this case.⁹

The reports of Mr. Coursey, a licensed social worker, regarding appellant's emotional condition and his disability for work do not constitute probative medical evidence, as a licensed social worker is not a physician as defined under the Act.¹⁰

For these reasons, appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

¹⁰ See *Frederick C. Smith*, 48 ECAB 132 (1996).