

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

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**JOSEPH R. SANTOS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grass Valley, CA, Employer**

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**Docket No. 04-1501  
Issued: October 18, 2004**

*Appearances:*  
*James A. Birt, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On May 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated April 30, 2004, denying his request for merit review of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's April 3, 2003 decision denying appellant's claim that he sustained an employment-related emotional condition. Because more than one year has elapsed between the last merit decision and the filing of this appeal on May 20, 2004 the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On September 17, 2001 appellant, then a 52-year-old mail carrier, filed a claim alleging that he sustained depression and anxiety due to various incidents and conditions at work. He claimed that beginning in January 1998 he traveled while working on a postal route inspection team and he developed stress due to working for 17 weeks away from his office and home. Appellant alleged that in his former capacity as a supervisor, his work required deadlines that were difficult to meet and that there was a great deal of pressure to meet mail count standards. He asserted that he received several improper disciplinary actions, including a proposed letter of removal in February 2001, for taking his supervisor's vehicle home without authorization.<sup>2</sup> Appellant also discussed various personal problems and alleged that the employing establishment failed in its responsibility to refer him to the employee assistance program. He stopped work on February 21, 2001 and did not return.

By decision dated March 22, 2002, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. He requested a hearing before an Office hearing representative. At the hearing, held on January 28, 2003 he provided further detail regarding the incidents and conditions at work that he felt caused his emotional condition. By decision dated and finalized April 3, 2003, the Office hearing representative affirmed the Office's March 22, 2002 decision, finding that appellant did not establish any compensable employment factors.

By letter dated March 4, 2004, appellant's attorney requested reconsideration of appellant's claim on his behalf. Appellant's attorney discussed a February 26, 2003 report of Dr. James Stratigakes, an attending clinical psychologist, and argued that it showed that appellant sustained an employment-related emotional condition. He submitted a copy of Dr. Stratigakes' report which had previously been received by the Office on February 28, 2003. By decision dated April 30, 2004, the Office denied appellant's request for merit review of his claim.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>3</sup> the Office regulation provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her

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<sup>2</sup> Appellant detailed the weather conditions on February 9 and 10, 2000 which he felt made it necessary for him to take the vehicle. He was not terminated from the employing establishment, but received a downgrade from supervisor to mail carrier.

<sup>3</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, "[t]he 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).

<sup>4</sup> 20 C.F.R. §§ 10.606(b)(2).

application for review within one year of the date of that decision.<sup>5</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>6</sup>

### ANALYSIS

In connection with the March 4, 2004 reconsideration request, appellant's attorney argued on his behalf that the February 26, 2003 report of Dr. Stratigakes, an attending clinical psychologist, showed that he sustained an employment-related emotional condition. However, this argument would not be relevant to the main issue of the present case because appellant's emotional condition claim was denied on the grounds that he did not establish any compensable employment factors, *i.e.*, a factual rather than a medical basis.<sup>7</sup> Because appellant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record.<sup>8</sup> No further argument or evidence was submitted to establish that appellant was exposed to any compensable employment factors which he felt caused or contributed to his emotional condition. The Board has held that the submission of argument or evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> Therefore, the argument of appellant's attorney does not have a reasonable color of validity or otherwise constitute a relevant legal premise not previously considered.<sup>10</sup>

Appellant's attorney submitted a copy of Dr. Stratigakes' report in connection with the reconsideration request. In addition to the fact that this report is not relevant to the main issue of the present case, it had previously been received by the Office on February 28, 2003. 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 a case.<sup>11</sup>

In the present case, appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its April 3, 2003 decision under section 8128(a) of the Act, because he 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 constitute relevant and pertinent new evidence not previously considered by the Office.

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<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors. *See Pamela R. Rice*, 38 ECAB 838, 841 (1987). When the matter asserted is a compensable employment factor and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence. *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>8</sup> *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>9</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>10</sup> *John F. Critz*, 44 ECAB 788, 794 (1993).

<sup>11</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member