

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

RONAL D. COX, Appellant

and

**TENNESSEE VALLEY AUTHORITY,
PUBLIC SAFETY SERVICE,
Chattanooga, TN, Employer**

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**Docket No. 03-609
Issued: September 30, 2004**

Appearances:
Ronal D. Cox, pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument September 8, 2004

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 7, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated October 10, 2002 denying his request for a merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board does not have jurisdiction over the merits of this case. Because more than one year has elapsed between the last merit decision dated November 30, 1998, which denied appellant's claim for an employment-related stress condition, and the filing of this appeal on January 7, 2003, the Board lacks jurisdiction to review the merits of his claim.¹

¹ Under the *Rules of Procedure* governing the jurisdiction of the Board, an appeal must be filed within 90 days from the date of the issuance of the final decision of the Office; for good cause shown, the Board may waive the failure to file within 90 days, but for not longer than 1 year from the date of the Office's decision. See 20 C.F.R. §§ 501.2(c) and 501.3(d).

ISSUE

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

FACTUAL HISTORY

On October 24, 1994 appellant, then a 53-year-old public safety manager, filed an occupational disease claim alleging that he sustained stress-related conditions, including anxiety attacks, high blood pressure and renal problems, due to incidents and conditions at work. In an accompanying memorandum, he explained that on November 9, 1992 he was informed that he was being replaced by another manager and that he would not be allowed to apply for a position as Vice President for Public Safety or for other lower-level management positions. He claimed that managers unfairly criticized his job performance and interfered with his ability to perform his job duties. Appellant asserted that these and other management actions constituted harassment and discrimination on the basis of age, race and sex. He retired from the employing establishment effective October 19, 1994.²

By decision dated April 6, 1995, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. The Office indicated that appellant did not show that any of the employing establishment's actions constituted harassment or discrimination.

By decision dated and finalized January 19, 1996, an Office hearing representative set aside the April 6, 1995 decision and remanded the case for further development to be followed by an appropriate decision. The Office hearing representative determined that the Office had not provided adequate findings of fact in its decision.

By decision dated January 7, 1997, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors. The decision included an extensive memorandum in which the Office discussed appellant's factual assertions.

By decision dated November 27, 1998 and finalized November 30, 1998, an Office hearing representative affirmed the January 7, 1997 decision, finding that appellant had not established any compensable employment factors. He indicated that appellant had submitted an August 1, 1997 settlement agreement produced in connection with his Equal Employment Opportunity Commission claim, but that the agreement explicitly stated that the employing establishment did not admit to any "error, wrongdoing, or discrimination."

In a letter dated November 24, 1999, appellant stated that he intended to file a request for reconsideration of his claim and indicated that he was also requesting a "new due date to be determined for this action." He extensively discussed the procedural history of his claim and asserted that he did not receive the November 30, 1998 decision until late December 1998 or early January 1999. Appellant requested that the Office establish a "new filing date for my claim and

² Appellant submitted several medical reports, dated in 1994 and 1995, which generally related his renal, blood pressure, and emotional conditions to stress and pressures at work.

request for reconsideration” and notify him as soon as possible. No additional evidence or argument was submitted.

By decision dated October 10, 2002, the Office denied appellant’s reconsideration request finding that he had not clearly identified the grounds upon which reconsideration was sought and had not submitted new and relevant evidence or made a new legal contention.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,³ the Office’s regulations provide that the evidence or argument submitted by 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.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ 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.⁶

ANALYSIS

At oral argument, appellant contended that the Board should decide the merit issue of his emotional condition claim. As noted, appellant filed his appeal to the Board on January 7, 2003, more than one year after the issuance of the November 30, 1998 merit decision that denied his claim for an employment-related stress condition. The Board has no authority to extend the one-year limitation for filing an appeal of any Office decision and lacks jurisdiction to review the merits of appellant’s claim.⁷ The only decision over which the Board has jurisdiction is the Office’s October 10, 1992 decision denying his request for reconsideration.

Office procedure provides that when an Office decision is delayed more than 90 days after a request for reconsideration is filed and the delay jeopardizes the claimant’s right to merit review before the Board, the Office should conduct a merit review. There is no obligation to conduct a merit review on insufficient evidence if the maximum one-year time limit for requesting review by the Board will have expired within the 90-day period following the Office’s receipt of the claimant’s request for reconsideration.⁸ The Office’s October 10, 2002 decision

³ 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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ *See* 20 C.F.R. §§ 501.2(c) and 501.3(d).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (January 2004).

denying appellant's request for reconsideration was issued more than 90 days after his November 24, 1999 request for reconsideration. But the delay did not jeopardize appellant's right to merit review before the Board. Appellant did not submit any evidence or legal argument with his request and, given that he filed his request for reconsideration six days short of one year after the November 30, 1998 merit decision, the one-year time limit for requesting review by the Board would have expired well within the 90-day period following his request. The Office therefore was not compelled to conduct a merit decision in connection with appellant's claim.

Appellant did not submit any evidence in conjunction with his November 24, 1999 request for reconsideration. He discussed the procedural history of his claim without presenting any legal argument supporting his claim. Appellant requested an extension of time to submit evidence to the Office.⁹ But his November 24, 1999 letter explicitly indicated that the letter was intended to constitute a request for reconsideration of his claim. The Office properly evaluated his letter as a request for reconsideration. Given that appellant submitted no evidence or legal argument in connection with his request for reconsideration, the Office properly found that he presented no basis to require reopening of his case for merit review.

Appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its October 10, 2002 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 present relevant and pertinent new evidence not previously considered by the Office.

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).

⁹ Appellant asserted that he did not receive the Office's November 30, 1998 decision until December 1998 or January 1999. Regardless of the actual date he received the decision, it remains unclear why he did not submit evidence in 1999 at some point prior to November 24, 1999.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 30, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member