

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

GARY A. SCHNELL, Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Erie, PA, Employer**

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**Docket No. 05-1469
Issued: December 2, 2005**

Appearances:
Gary A. Schnell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On July 5, 2005 appellant filed a timely appeal of the January 5, 2005 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration of a March 31, 2004 decision. Because more than one year has elapsed between the March 31, 2004 merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). Accordingly, the only decision properly before the Board is the January 5, 2005 decision.

ISSUE

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

FACTUAL HISTORY

Appellant, a 50-year-old former city carrier, has an accepted occupational disease claim for adjustment disorder with anxiety and depression, which arose on or about October 6, 1992. On July 10, 2003 appellant filed for a schedule award, however, he did not submit any medical

evidence in support of his claim. He also filed an August 15, 2003 claim for compensation (Form CA-7) for wage loss beginning February 3, 2003.

On February 11, 2004 the Office advised appellant of the type of medical evidence required to support a claim for a schedule award. He was instructed to obtain a medical assessment from his treating physician regarding the extent of any permanent impairment attributable to his accepted psychiatric condition. The Office also provided appellant information regarding the type of evidence required to establish a recurrence of disability. Appellant, however, did not submit the requested impairment rating or any medical evidence relevant to a recurrence of disability.

In a March 31, 2004 decision, the Office denied appellant's claim for a schedule award. In a separate decision, also dated March 31, 2004, the Office found that appellant failed to establish a recurrence of disability.

On December 17, 2004 appellant requested reconsideration of the decision denying his claim for recurrence of disability. He also requested a review of the written record regarding the March 31, 2004 denial of a schedule award.

Appellant submitted additional medical evidence that included treatment records for sinusitis, left otitis externa, cervical and lumbar pain, right knee pain, bilateral hand, foot and ankle pain and anxiety. A July 23, 2003 report from Dr. Hunezia Y. Zakaria noted that appellant still complained of anxiety at the workplace. He reportedly felt that his coworkers and management were trying to get him out of there by setting up an environment where he could not work. Appellant also submitted a November 1, 2004 medical disability determination from the Social Security Administration, which found appellant disabled as of January 27, 2004.

In a decision dated January 5, 2005, the Office denied appellant's request for reconsideration.¹

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.² Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.³ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

¹ The record before the Board does not include a final decision from the Branch of Hearings and Review regarding appellant's December 17, 2004 request for a review of the written record concerning his claim for a schedule award.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

Appellant's December 17, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).⁵

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). Most of the medical evidence submitted on reconsideration was unrelated to appellant's October 6, 1992 accepted condition of adjustment disorder with anxiety and depression. The treatment records for appellant's sinusitis, left ear infection and various other orthopedic conditions involving the back and upper and lower extremities are not relevant to the issue of whether appellant was disabled on or after February 3, 2003 due to his employment-related psychiatric condition.⁶ The only medical evidence of an ongoing psychiatric condition was Dr. Zakaria's July 23, 2003 treatment note wherein he reported that appellant still complained of anxiety at the workplace. However, he did not find appellant disabled nor did he relate appellant's current psychiatric condition to his accepted injury of October 6, 1992. Dr. Zakaria noted that appellant attributed his anxiety to recent efforts by coworkers and management "to get him out of there." As Dr. Zakaria's July 23, 2003 treatment note does not attribute appellant's current psychiatric condition to his accepted injury of October 6, 1992, this evidence is not relevant to the issue on reconsideration.⁷

The November 1, 2004 Social Security Act disability determination is similarly insufficient to warrant reopening the record for merit review. Findings of other federal agencies are not determinative with regard to questions of entitlement arising under the Federal Employees' Compensation Act.⁸ The November 1, 2004 decision does not provide a gauge by which to determine that the Social Security Administration's disability finding is relevant to the current proceedings under the Federal Employees' Compensation Act.⁹ Accordingly, the Board finds that the voluminous records submitted in conjunction with appellant's December 17, 2004 request for

⁴ 20 C.F.R. § 10.608(b) (1999).

⁵ 20 C.F.R. §§ 10.606(b)(2)(i) and (ii) (1999).

⁶ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case. *Stella M. Bohlig*, 53 ECAB 341, 345 (2002).

⁷ *Id.*

⁸ *Michael A. Deas*, 53 ECAB 208, 217 (2001).

⁹ While the decision identifies three recent medical reports the Social Security Act relied upon in deciding appellant's claim, the substance of those reports are not reflected in the decision nor does the current record include copies of the referenced reports.

reconsideration do not constitute relevant and pertinent new evidence.¹⁰ As such, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).¹¹ Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the December 17, 2004 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's December 17, 2004 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employee' Compensation Appeals Board

¹⁰ The Office received more than 125 pages of documents on December 30, 2004. In addition to the above-mentioned medical records and Social Security Act determination, the Office received copies of correspondence between appellant and his Congressional representative, which was unrelated to the claimed recurrence of disability. Appellant also provided a copy of an April 22, 1998 light-duty assignment and a July 15, 2002 memorandum of understanding between management and the union, neither of which were relevant to the issue on reconsideration.

¹¹ 20 C.F.R. § 10.606(b)(2)(iii) (1999).