

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

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SAMUEL G. McDANIEL, Appellant)	
)	Docket No. 03-1724
and)	Issued: March 14, 2005
)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer)	
_____)	

Appearances:
Samuel G. McDaniel, pro se
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument Held January 13, 2005

DECISION AND ORDER

Before:

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

JURISDICTION

Appellant filed a timely appeal of a June 13, 2003 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration without merit review of the claim. Pursuant to 20 C.F.R. § 501.3, the Board's jurisdiction is limited to review of final decisions issued within one year of the filing of the appeal. The only decision before the Board is the June 13, 2003 decision denying appellant's request for reconsideration.

ISSUE

The issue is whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

The case was before the Board on a prior appeal. On September 25, 2002 the Board affirmed a February 24, 2000 Office hearing representative's decision, finding that it properly

terminated appellant's compensation as of June 1, 1992.¹ The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

On January 15, 2003 the Office received evidence duplicative of evidence previously submitted to the record. With respect to the medical evidence, appellant resubmitted reports such as August 31, 1992 and December 7, 1994 from Dr. Ibrahim Farid, an occupational medical specialist. By letter dated March 10, 2003, he requested reconsideration of his claim. On March 24, 2003 appellant submitted a March 18, 2003 statement asserting that there was new evidence regarding discrimination against disabled veterans of color. He submitted a November 30, 2002 statement that was submitted to the Board on a petition for reconsideration. On April 3, 2003 appellant submitted additional evidence, including pages 9 and 10 of a report by Dr. R.W. Burgoyne, a psychiatrist. The record indicated that these pages had been previously submitted prior to the February 24, 2000 Office decision.

By decision dated June 13, 2003, the Office denied appellant's request for reconsideration without merit review of the claim. The Office found that appellant failed to submit new and relevant evidence with respect to 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,² the Office's regulation provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either "(i) shows that [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 evidence not previously considered by [the Office]."³ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁴

ANALYSIS

In this case, appellant did not meet any of the requirements of section 10.606(b)(2). He expressed his unhappiness regarding the inability to be reemployed at the employing establishment; this is an issue between appellant and the employing establishment and is not within the jurisdiction of the Act.⁵ He submitted letters expressing his disagreement with the Office's adjudication of his claim, but appellant did not show that the Office erroneously applied

¹ Docket No. 00-1176 (issued September 25, 2002).

² 5 U.S.C. § 8128(a) (providing that "[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").

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ *See, e.g., Lloyd E. Griffin, Jr.*, 46 ECAB 979, 982 (1995).

or interpreted a specific point of law, nor did he advance a new and relevant legal argument. Moreover, he did not submit relevant and pertinent evidence not previously considered by the Office.⁶ Appellant asserted that he had new evidence and information but he did not submit any new and relevant evidence. The merit decisions of record found that his employment-related condition had resolved by June 1, 1992. This is a medical issue and appellant did not submit any new and relevant medical evidence. As noted, he submitted a small portion of a report by a Dr. Burgoyne that was repetitious of pages previously of record and, therefore, is not new medical evidence.

CONCLUSION

Since 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 new and relevant evidence, he did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and he is not entitled to a merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2003 is affirmed.

Issued: March 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ The record contains evidence that was received by the Office after the June 13, 2003 decision. The regulation state that the Board's review of a case is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).