

ISSUE

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

FACTUAL HISTORY

The case was before the Board on a prior appeal. On January 29, 2003 the Office denied appellant's claim for an emotional condition on the grounds that he failed to establish compensable factors of his federal employment.³ In a nonmerit decision dated November 18, 2003, the Office denied appellant's request for reconsideration on the grounds that he failed to submit any new evidence or raise any new legal arguments. In a decision dated June 23, 2004, the Board found that appellant had not established that he sustained an emotional condition in the performance of duty as he failed to establish any compensable factors of employment. The Board also found the Office properly refused to reopen his case for further review of the merits. The factual history of the cases is set forth in the June 23, 2004 decision and incorporated herein by reference.⁴

On October 1, 2004 the Office received a September 21, 2004 referral to a psychiatrist and an authorization request.⁵

On March 25, 2005 the Office received a March 21, 2005 notice of potential third-party claim sent to appellant by the employing establishment regarding a new injury sustained on February 25, 2005.

In a letter dated June 20, 2005, appellant's representative requested reconsideration, contending that appellant's emotional condition was a consequential injury due to a previously accepted claim (No. 06-0727810). He requested the Office to remand the case for development as a consequential injury instead of a new occupational disease claim. Appellant also contended that, due to his filing two claims with the same date of injury, *i.e.*, May 23, 2002, documents submitted in support of the claims were placed in the wrong files.⁶ In support of his request for reconsideration, appellant submitted a client checklist for the Employees' Assistance Program (EAP); reports dated May 23 to October 1, 2002 from Dr. Walter E. Afield, a treating Board-certified psychiatrist; a September 21, 2004 psychiatric consultation report by Dr. Raul F. Nodal, a Board-certified neurologist; and an EAP consulting program; appellant's statement; and a May 28, 2002 duty status report (Form CA-17).

In his statement, appellant attributed his condition to "derogatory statements made" by his supervisor, constant street observation, being denied schedule changes and other benefits

³ Appellant, then a 47-year-old city letter carrier, contended his stress was due to harassment by the employing establishment about his physical condition.

⁴ Docket No. 04-253 (issued June 23, 2004).

⁵ The physician's signature is illegible. The Board notes that the record contains information for other claimants.

⁶ The two claims numbers were noted as 06-2060868 and 06-2063225.

awarded to noninjured coworkers and being ridiculed by coworkers. He also alleged a hostile work environment based upon treatment by his supervisors and coworkers.

In a May 23, 2002 report, Dr. Afield diagnosed severe depressive reaction and explosive personality disorder. He stated that appellant's "perceived unfair treatment has caused him to lose control and become very angry and very violent." Dr. Afield opined that appellant's condition was a "direct cause from the workplace environment." On July 16, 2002 Dr. Afield, based upon a review of medical records, concluded that appellant had suffered repetitive injuries in his job as a letter carrier, and discussed injury to his elbows and knees on May 23, 2002. On October 1, 2002 Dr. Afield noted that appellant related having problems with his supervisor and that he "became increasingly angry to the point where he was unable to function." He attributed appellant's depression to his chronic pain and "relationship with his supervisor." On August 6, 2002 Dr. Afield attributed appellant's emotional condition to his "chronic pain, multiple surgeries and procedures he has had to endure due to the repetitive injuries he sustained at work."

In a September 21, 2004 report, Dr. Nodal diagnosed mood disorder with mixed features due to chronic pain and recommended psychotherapy and psychiatric treatment. He concluded that appellant's "emotional condition is directly related to his chronic pain situation, which in turn is work related leading to multiple surgeries and chronic pain.

In a nonmerit decision dated July 27, 2005, the Office denied appellant's request for reconsideration. The Office noted that appellant could pursue benefits for a consequential injury under the appropriate case.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁷ section 10.606(b)(2) of the implementing federal regulation provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹ Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a

⁷ 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).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

basis for reopening a case.¹⁰ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

ANALYSIS

Appellant disagreed with the denial of his claim for an emotional condition and requested reconsideration. The underlying issue on reconsideration is whether appellant established a compensable factor of employment. Appellant did not provide relevant or pertinent new evidence regarding this issue.

In his June 20, 2005 request for reconsideration, appellant's representative contended that appellant sustained a consequential injury of an accepted claim. He alleged that, due to the filing of two claims with same date of injury, *i.e.*, May 23, 2002, documents were placed in the wrong file. The Board finds that appellant has not shown that the Office erroneously applied or interpreted a specific point of law nor has he advanced a relevant legal argument not previously considered.

The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.¹² Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an emotional condition in the performance of duty.

Appellant submitted a client checklist for the EAP; reports dated May 23 to October 1, 2002 from Dr. Afield, a treating Board-certified psychiatrist; a September 21, 2004 psychiatric consultation report by Dr. Nodal, a Board-certified neurologist; and an EAP consulting program; appellant's statement; and a May 28, 2002 duty status report (Form CA-17). None of the medical reports submitted are relevant to the underlying issue in this case as appellant has not established a compensable factor of employment. Because of this, it is premature to consider medical evidence addressing causal relationship.¹³ The Board notes that no employment factors have been established to substantiate appellant's allegations of harassment by this supervisor or coworkers. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or

¹⁰ *Helen E. Paglinawan*, 51 ECAB 591 (2000).

¹¹ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

¹² *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

¹³ *See Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

¹⁴ *Alan G. Williams*, 52 ECAB 180 (2000) *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2005 is affirmed.

Issued: April 5, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board