

FACTUAL HISTORY

On February 26, 2004 appellant, then a 47-year-old postmaster,³ filed an occupational disease claim alleging that he developed high blood pressure, depression and anxiety beginning March 15, 1999 due to threats in the form of anonymous notes and telephone calls from the Ku Klux Klan.

In a February 27, 2004 report, Dr. Vincent D. Mallory, an attending family practitioner, diagnosed depression, anxiety and hypertension caused by job stress. In an April 20, 2004 report, he stated that he had treated appellant since June 2002 and his current medical problems included depression, anxiety, hypertension, low back pain and gastrointestinal problems. Dr. Mallory indicated that his depression and anxiety were related to a demanding workload, handling difficult customers and employees and receiving threatening notes and telephone calls.

Appellant submitted reports dated December 1999 through April 2004 from counselors at the Family Counseling Agency and the employing establishment's Employee Assistance Program. The counselors described his problems with receiving threatening notes at work.

By decision dated October 25, 2004, the Office denied appellant's claim on the grounds that it was not timely filed. It found that he should have been aware of the relationship between his claimed condition and his employment as of March 15, 1999, but failed to file his claim until February 26, 2004, more than three years after March 15, 1999. The Office noted that the evidence did not establish that appellant's immediate supervisor had actual knowledge of his condition within 30 days of the March 15, 1999 date of injury.

On October 20, 2005 appellant requested reconsideration. He argued that an affidavit from D'Wain West, his immediate supervisor, as well as affidavits from Foley Nash and Charles Mitchell, established that Mr. West had actual knowledge of his condition within 30 days of March 15, 1999.⁴ Appellant argued that the affidavits constituted relevant and pertinent evidence not previously considered by the Office and were sufficient to warrant further merit review of his claim.

By decision dated January 20, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant a merit review of his claim.⁵

³ Appellant was postmaster at the Pollock, Louisiana Post Office from December 6, 1997 to August 9, 2002. On August 10, 2002 he became postmaster for the Winnfield, Louisiana Post Office. He was granted disability retirement effective November 7, 2004.

⁴ These affidavits were not received by the Office prior to the January 20, 2006 decision.

⁵ Appellant submitted additional evidence subsequent to the Office decision of January 20, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁶ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.⁷ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸

ANALYSIS

In support of his request for reconsideration, appellant indicated that he was submitting three affidavits which established that his immediate supervisor had actual knowledge of his condition within 30 days of March 15, 1999. However, no such affidavits were received by the Office. There is no evidence of record, received by the Office prior to the January 20, 2006 decision, which addresses the issue of whether appellant's claim was timely filed. He did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2006 is affirmed.

Issued: August 14, 2006
Washington, DC

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

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