

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

<p><b>R.J., Appellant</b></p> <p><b>and</b></p> <p><b>DEPARTMENT OF THE ARMY, AREA MAINTENANCE SUPPORT ACTIVITY – 26(G), Austin, TX</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. 06-1084</b></p> <p><b>Issued: December 19, 2006</b></p>
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 3, 2006 appellant filed a timely appeal of an April 6, 2005 nonmerit decision of the Office of Workers' Compensation Programs which denied his request for reconsideration. As the last merit decision in this case was issued on January 15, 2003, over one year prior to the filing of this appeal, the Board does not have jurisdiction over the merits of the claim under 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly denied appellant's request for further merit review under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On July 20, 1999 appellant, then a 44-year-old heavy mobile equipment repairer, filed a traumatic injury claim alleging that on July 20, 1999 he injured his back while lubricating a task vehicle. The Office accepted this claim as a recurrence of a previous work-related lumbar strain.

On May 8, 2001 appellant filed a claim for recurrence of disability with this claim. On August 3, 2001 the Office denied appellant's claim for recurrence on the basis that the medical evidence of record did not establish a causal relationship between the accepted work injury of July 20, 1999 and the claimed recurrence of disability. Appellant requested a hearing.

On June 28, 2001 appellant filed an occupational disease claim alleging that he sustained an acute depression and post-traumatic stress disorder as a result of his federal employment. By decision dated February 25, 2002, the Office denied appellant's claim for an emotional condition. The Office determined that there were no compensable factors of employment. It also determined that appellant had not submitted medical evidence to establish an emotional condition causally related to specific factors of his federal employment. On March 22, 2002 appellant requested an oral hearing.

In a decision dated January 15, 2003, the Office hearing representative affirmed the August 3, 2001 decision that appellant had not established that he sustained a recurrence of the accepted July 20, 1999 employment injury. With regard to the denial of appellant's claim for an emotional condition, the hearing representative addressed each of the factors that appellant alleged caused his condition. The hearing representative accepted that appellant had established compensable factors under the Federal Employees' Compensation Act. The Equal Employment Opportunity (EEO) Commission determined that the employing establishment breached a settlement agreement with regard to eight EEO complaints filed by appellant. These breaches of the settlement agreement constituted compensable error by the employing establishment with regard to administrative functions. However, the hearing representative found that appellant did not establish his emotional condition claim because he failed to submit medical evidence sufficient to support a causal relationship between the compensable factors of employment and his medical condition. The hearing representative affirmed the February 25, 2002 decision, as modified.

By letter dated November 18, 2003, appellant, through his attorney, requested reconsideration. Counsel argued that appellant sustained an emotional condition as a result of several work factors and that the medical evidence supported that his employment caused or aggravated appellant's psychological condition.<sup>1</sup> No further action was taken.

By letter dated January 31, 2005, the Office informed the employing establishment that appellant had submitted a request for reconsideration that warranted a merit review. The Office informed the employing establishment that if no comments were received, it would proceed with a merit review of the case. A copy of this letter was sent to appellant's attorney.

By decision dated April 6, 2005, the Office denied appellant's request for reconsideration. The Office found that a merit review of appellant's case was not warranted on the basis that appellant did not submit new and relevant evidence or make any new legal arguments.

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<sup>1</sup> Appellant did not file a request for reconsideration from the denial of his recurrence claim and therefore this aspect of the case is not before the Board on this appeal. See 20 C.F.R. § 10.501.2(c).

## LEGAL PRECEDENT

The Act<sup>2</sup> provides that the Office may review an award for or against compensation upon application by an employee who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.<sup>3</sup>

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office' regulations provide that the application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.<sup>5</sup>

## ANALYSIS

The Board finds that the Office abused its discretion in denying appellant's request for further merit reconsideration. In a January 31, 2005 letter, the Office claims examiner advised the employing establishment and appellant's attorney that it would proceed with a review on the merits. Moreover, there was a delay of over a year between appellant's November 18, 2003 reconsideration request and when the Office issued its April 6, 2006 decision. As the Board only has jurisdiction to review decisions issued by the Office within one year from the date appellant filed his appeal, this delay in reviewing appellant's reconsideration request jeopardized his right to an appeal on the merits of his claim.<sup>6</sup> Accordingly, the Board will remand the case to the Office for a review on the merits.

## CONCLUSION

The Office improperly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> 20 C.F.R. § 10.605.

<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> 5 U.S.C. §§ 8101-8193, § 8128(a). The Board has found that the imposition of the one-year limitation does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Act. *See Adell Allen (Melvin L. Allen)*, 55 ECAB 390 (2004).

<sup>6</sup> The Office's procedures provided that: "The goal for issuing reconsideration decisions is 90 days from receipt of the request." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2c (January 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 6, 2005 is set aside. The case is remanded to the Office for further action consistent with this opinion.

Issued: December 19, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board