

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

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Memphis, TN, Employer**

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**Docket No. 06-1759  
Issued: December 20, 2006**

*Appearances:*  
C.B. Weiser, Esq., for the appellant  
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 July 26, 2006 appellant filed a timely appeal from the April 28, 2006 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 March 23, 2005, this Board does not have jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

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

**FACTUAL HISTORY**

On February 25, 2004 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging nightmares, sleeplessness, emotional nervousness, depression and anxiety as a result of his federal employment. The employing establishment controverted the claim.

By decision dated July 16, 2004, the Office denied appellant's claim for an emotional condition. It found that she had not established any compensable employment factors arising in

the performance of duty. On July 29, 2004 appellant requested an oral hearing which was held on December 13, 2004. Appellant's attorney contended that appellant's discharge from the employing establishment constituted a compensable factor of employment as it constituted abuse or error on the part of the employing establishment. He noted that one arbitrator found that management did not prove the charges against appellant and that, even if the charges had been proven, they were not sufficient to support his discharge. In a letter to the hearing representative dated January 18, 2005, counsel contended that the arbitration award established that the employing establishment committed abuse or error when it issued the notice of proposed removal on August 5, 2002.

By decision dated March 23, 2005, the hearing representative affirmed the Office's July 16, 2004 decision denying appellant's claim. She found that appellant had not established any compensable factors of employment.

By letter dated March 20, 2006, appellant, through his attorney, requested reconsideration. Counsel again argued that the arbitration decision was not a settlement agreement but rather a formal decision resolving the issues in appellant's favor. He reiterated that the employing establishment committed error and abuse in issuing the discharge notice to appellant.

By decision dated April 28, 2006, the Office denied appellant's request for reconsideration of the merits of his claim.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>1</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>2</sup>

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's 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>3</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.605.

<sup>3</sup> 20 C.F.R. § 10.606.

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.<sup>4</sup>

### **ANALYSIS**

On reconsideration, appellant did not submit relevant and pertinent new evidence not considered by the Office. Rather, appellant's attorney again argued that the employing establishment committed error and abuse in issuing the discharge notice to appellant. However, this argument was raised at appellant's hearing when it was argued that management did not prove the charges leveled against appellant in the discharge hearing and as the arbitrator found that the charges were insufficient to establish discharge. Appellant's attorney also wrote a letter to the hearing representative dated January 18, 2005 arguing this same point. Accordingly, appellant's attorney did not present new legal argument, nor did appellant's attorney prove that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Office properly denied appellant's request for reconsideration without reviewing the case on the merits.

### **CONCLUSION**

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

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<sup>4</sup> 5 U.S.C. §§ 8101-8193, § 8123(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 \_\_\_ (Docket No. 04-208, issued March 18, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 28, 2006 is affirmed.

Issued: December 20, 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