United States Department of Labor
Employees' Compensation Appeals Board

EDWIN W. RIVERA, Appellant	)	
and	)	**Docket No. 05-1529**
	)	**Issued: July 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Edwin W. Rivera, pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument May 16, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 12, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 6, 2005 nonmerit decision denying his request for further review of the merits of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of the Office was its December 31, 2003 decision denying appellant's claim that he sustained an employment-related emotional condition. Because more than one year has elapsed between the last Office merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

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

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

This is the second appeal in this case. In the first appeal,[2] the Board issued a decision on June 6, 2005 in which it affirmed the April 3 and December 31, 2003 decisions of the Office on the grounds that appellant did not meet his burden of proof to establish that he sustained an employment-related emotional condition.[3] The Board found that the Office had properly determined that appellant did not establish any of his claimed compensable employment factors.[4] The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

In an undated letter received by the Office on April 1, 2005, appellant requested reconsideration of the Office's denial of his emotional condition claim. Appellant submitted a May 1, 2005 statement providing descriptions of claimed compensable employment factors which were similar to the descriptions provided in earlier statements he submitted to the Office. He again claimed that he was harassed by Mr. Gant, Ms. Manies and other supervisors, that he was subjected to improper disciplinary actions, that his breaks and restroom and health clinic visits were unreasonably scrutinized, and that supervisors improperly talked to coworkers about his health problems and work habits.[5]

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[2] Docket No. 04-796 (issued July 6, 2004).

[3] On June 13, 2002 appellant, then a 50-year-old mail handler, filed a claim alleging that he sustained depression and anxiety due to various incidents and conditions at work. He indicated that on July 5, 2001 Mary Ann Manies, a supervisor, called him into a room filled with other supervisors and accused him of lying in his injury report and threatened to report him to the postal inspector for investigation. Appellant stated that, prior to July 5, 2001, he was harassed by his supervisor, Benny Gant, and that two postal managers he complained to did not do anything about the situation. Appellant claimed that on July 6, 2001 Mr. Gant gave him an investigative interview and told him that it could lead to a disciplinary action. He asserted that he received unfair disciplinary letters, including a July 19, 2001 letter of warning regarding the July 5, 2001 incident, a September 5, 2001 letter of warning for unsatisfactory attendance, and a May 8, 2002 letter of warning for arriving late to work. Appellant alleged that Phil Perry, a supervisor, harassed him by saying that Ms. Manies had indicated that she did not want to talk to him after he had asked to speak to her. He claimed that he sustained stress when Gary Banlowe, a supervisor, gave him an investigative interview on March 21, 2002. Appellant asserted that he was wrongly prohibited from flossing his teeth in the restroom and from going to the health clinic and that Mr. Gant discriminated against him by not taking his seniority into consideration when assigning duties and by talking to coworkers about his health and work habits. He also asserted that Mr. Gant harassed him by following him into the restroom and questioning him about his breaks.

[4] Appellant submitted several statements of coworkers, but the Office found that these statements were not sufficient to establish his claim. In an undated statement, Louis Rubens asserted that Mr. Gant followed appellant into the restroom and questioned him about his breaks. He claimed that, in one instance, Mr. Gant showed him and other employees appellant's medical documentation. Mr. Rubens stated that he saw Mr. Gant follow appellant into the restroom and question him about his breaks. In an undated statement, Michael Bridges stated that Mr. Gant would stand over appellant and "watch his every move." He described an incident when Mr. Gant followed appellant into the restroom. Appellant also submitted documents concerning his Equal Employment Opportunity (EEO) claims and Employee Assistance Program (EAP) matters.

[5] The record also contains an April 22, 2005 letter to appellant's congressional representative which contains a similar recitation of claimed employment factors.

Appellant submitted an undated statement which he prepared and signed along with eight coworkers. He indicated that at a January 3, 2002 meeting Mr. Perry instructed him to "work out of section up in the flats" despite the fact that there was enough work in his own section. Appellant also asserted that Mr. Perry indicated that he should talk to Ms. Manies about the matter, but that Mr. Perry also stated that Ms. Manies "did not want to talk" to him about the matter.

Appellant submitted documents concerning EEO claims and EAP matters and the undated statements of Mr. Rubens and Mr. Bridges, which had previously been submitted to the Office. He also submitted copies of prior Office decisions and Office claim forms and an August 1, 1995 letter of recommendation. Appellant submitted several medical reports concerning the treatment he received for his emotional problems.

By decision dated June 6, 2005, the Office denied appellant's request for further review of the merits of 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,[6] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[7] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[8] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[9]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[10] The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[11]

[6] 5 U.S.C. §§ 8101-8193. 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).

[7] 20 C.F.R. § 10.606(b)(2).

[8] 20 C.F.R. § 10.607(a).

[9] 20 C.F.R. § 10.608(b).

[10] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[11] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ANALYSIS

Appellant claimed that he sustained an emotional condition due to various incidents and conditions at work and the Office denied his claim on the grounds that he did not establish any compensable employment factors. By decision dated June 6, 2005, the Office denied appellant's request for further review of the merits of his claim.

In support of his April 2005 reconsideration request, appellant submitted a May 1, 2005 statement in which he discussed his claimed employment factors, including his claims that he was harassed by Mr. Gant, Ms. Manies, and other supervisors, that he was subjected to improper disciplinary actions, that his breaks and restroom and health clinic visits were unreasonably scrutinized, and that supervisors improperly talked to coworkers about his health problems and work habits. The Board notes, however, that the submission of this statement did not require reopening of his claim for further merit review because the statement contains descriptions of claimed compensable employment factors which are duplicative to the descriptions provided in earlier statements submitted to the Office.[12]

Appellant submitted an undated statement which he prepared and signed along with eight coworkers. He indicated that at a January 3, 2002 meeting Mr. Perry, a supervisor, gave him improper work instructions and told him that Ms. Manies "did not want to talk" to him about the matter. The Board notes, however, that this statement is of such a vague and generalized nature that it would not be relevant to appellant's claims of supervisory harassment and discrimination.[13] As noted above, the submission of irrelevant evidence would not require reopening of a claim for further merit review.[14]

Appellant submitted documents concerning EEO claims and EAP matters and undated statements of two coworkers, Mr. Rubens and Mr. Bridges, but these documents had previously been submitted to the Office. He also submitted copies of prior Office decisions and Office claim forms and an August 1, 1995 letter of recommendation, but these documents are not relevant to the main issue of the present case, *i.e.*, whether appellant has established any compensable employment factors. Appellant submitted several medical reports concerning the treatment he received for his emotional problems, but these reports would not be relevant as the main issue of the present case is factual rather than medical in nature.

In the present case, appellant has not established that the Office improperly denied his request for further review of the merits of his claim under section 8128(a) of the Act, because the evidence and argument he submitted did not to show that the Office erroneously applied or

[12] *See supra* note 10 and accompanying text. The record also contains an April 22, 2005 letter to appellant's congressional representative. However, this letter contains a similar recitation of claimed employment factors.

[13] For harassment or discrimination to give rise to a compensable disability under the Act, there must be probative evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act. *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[14] *See supra* note 11 and accompanying text.

interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 6, 2005 decision is affirmed.

Issued: July 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