

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

RICHARD D. NOLAN, Appellant)
and) Docket No. 06-624
DEPARTMENT OF THE NAVY, NAVAL) Issued: June 21, 2006
COASTAL SYSTEMS STATION,)
Panama City, FL, Employer)

)

Appearances:

Paul H. Felser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 24, 2006 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated October 20, 2005, which denied merit review. Because more than one year has elapsed between the last merit decision of the Office dated November 3, 2003 and the filing of this appeal on January 24, 2006, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 12, 1999 appellant, then a 52-year-old machinist work leader, filed a Form CA-1, traumatic injury claim, alleging that verbal abuse by a coworker caused stress, anxiety and depression. He advised that the date of injury was July 23, 1997. In a decision dated June 17, 1999, the Office denied the claim. Following a February 14, 2000 hearing, by decision dated

April 20, 2000, an Office hearing representative remanded the case to obtain a second opinion evaluation. On May 10, 2000 the Office accepted that appellant sustained employment-related anxiety and depression.¹

Appellant came under the care of David J. Smith, Ph.D., a licensed clinical psychologist, and Dr. Bruce R. Schoolcraft, an osteopathic physician specializing in psychiatry. On August 10, 2000 appellant filed a Form CA-2a claim, alleging that he sustained a recurrence of disability on February 17, 1999.² By decision dated February 14, 2001, the Office denied the claim.³ After a hearing held on December 20, 2001, in a March 18, 2002 decision, an Office hearing representative remanded the case to the Office to obtain a second opinion evaluation regarding whether appellant's alleged recurrence on February 17, 1999 was causally related to the accepted July 23, 1997 employment incident.

On March 27, 2002 the Office referred appellant, together with a statement of accepted facts, the medical record and a set of questions, to Dr. Douglas H. Fraser, a Board-certified psychiatrist. In a June 25, 2002 decision, the Office denied appellant's recurrence of disability claim, crediting the weight of medical opinion to Dr. Fraser, who opined that appellant's claimed recurrence was not caused by the July 23, 1997 employment incident.

On June 20, 2003 appellant, through his attorney, requested reconsideration and submitted additional medical evidence. The Office determined that a conflict in medical evidence arose between the opinions of Dr. Fraser, who provided the second opinion evaluation for the Office, and Dr. Smith, appellant's attending psychologist.⁴ It referred appellant, together with a statement of accepted facts, the medical record and a set of questions, to Dr. Henry H. Dohn, a Board-certified psychiatrist, for an impartial evaluation. By decision dated November 3, 2003, the Office denied modification of the June 25, 2002 decision. The Office found the weight of medical opinion was represented by Dr. Dohn, who opined that appellant did not sustain a recurrence of disability on February 17, 1999 causally related to the July 23, 1997 employment injury.

Drs. Smith and Schoolcraft continued to submit reports dating from May 8, 2003 to October 18, 2004. In an October 11, 2004 report, Dr. Jack K. Gray, Jr., a psychiatrist, noted seeing appellant for medication review. On November 2, 2004 appellant, through his attorney, requested reconsideration. Appellant argued that Dr. Dohn's report was not rationalized and submitted reports from Dr. Smith dated June 17 and October 21, 2003. Additional reports from Dr. Smith dating from November 17, 2004 to May 23, 2005 were also submitted. In reports dated January 10 and April 18, 2005, respectively, Dr. Gray and Dr. Edward D. Gibson, Jr., a

¹ The Office did not refer appellant for a second opinion evaluation prior to accepting the claim. It accepted that on July 23, 1997 appellant was verbally abused by a coworker. He thereafter claimed 136 hours of sick leave.

² This claim was initially developed as a new injury under Office file number 062022324. The instant claim was adjudicated under file number 060725659. Appellant was absent from work from February 17 to November 21, 1999, when he returned to a different work location. He was again reassigned on June 30, 2002.

³ A copy of this decision is not found in the record before the Board.

⁴ Dr. Smith submitted a June 17, 2003 report in which he noted his disagreement with Dr. Fraser's conclusions.

psychiatrist, noted their review of appellant's medications. By decision dated October 20, 2005, the Office denied appellant's reconsideration request, finding the evidence submitted cumulative, repetitious or irrelevant.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁵ vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁶ Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).⁷ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

The only decision before the Board in this appeal is the October 20, 2005 decision of the Office denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated November 3, 2003 and the filing of this appeal with the Board on January 24, 2006, the Board lacks jurisdiction to review the merits of his claim.¹⁰

With his November 2, 2004 reconsideration request, appellant argued that Dr. Dohn's report was not rationalized. The Board however notes that, in its November 3, 2003 decision, the Office reviewed Dr. Dohn's October 24, 2003 report and determined that it was sufficiently rationalized.¹¹ This argument is therefore repetitious and not sufficient to warrant merit review. Appellant thus did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.608(a).

⁸ 20 C.F.R. § 10.608(b)(1) and (2).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ 20 C.F.R. § 501.3(d)(2).

¹¹ The Board notes that the November 3, 2003 decision contains typographical errors as it refers to Dr. Dohn as Dr. Harris. Dr. Dohn's full name is Dr. Henry Harris Dohn.

Office. Consequently, he was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).¹²

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant submitted additional evidence, Dr. Smith had been on one side of the conflict in medical opinion and merely reiterated his opinion that appellant's emotional condition was employment related. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ Thus, the numerous reports from Dr. Schoolcraft and the reports of Drs. Gray and Gibson are insufficient to warrant merit review as they merely address appellant's medication requirements and do not address the cause of his condition, the merit issue in the instant case.

Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied his reconsideration request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2005 be affirmed.

Issued: June 21, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹² 20 C.F.R. § 10.606(b)(2).

¹³ *James A. Castagno*, 53 ECAB 782 (2002).

¹⁴ *Stella M. Bohlig*, 53 ECAB 341 (2002).