

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

HARRISON DORSEY, II, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pasadena, CA, Employer**

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**Docket No. 06-246
Issued: March 8, 2006**

Appearances:
Harrison Dorsey, II, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On November 10, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated August 10, 2005 which denied merit review. Because more than one year has elapsed between the last merit decision of the Office dated May 12, 2004 and the filing of this appeal on November 10, 2005, 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 July 25, 2002 appellant, then a 63-year-old custodian, filed a Form CA-2, occupational disease claim, alleging that his heart attack and severe depression were caused by supervisory and management harassment. He was first aware that his condition was employment related in 2000 and stopped work on May 1, 2002. Appellant has not returned to work.

By letter dated August 6, 2002, the Office informed appellant of the evidence needed to support his claim. In an August 13, 2002 statement, Leona Jones, supervisor of customer service, stated that she had been appellant's supervisor for four and a half years. She noted that she had only taken corrective action against appellant on one occasion, when he was involved in a confrontation with another employee.

In a September 1, 2002 statement, appellant enumerated a number of complaints against Ms. Jones and alleged that he had been overworked in 1999 when the employing establishment was being renovated, noting that he had to work in three different locations. He also submitted evidence regarding an Equal Employment Opportunity (EEO) Commission complaints filed in 2000, and medical evidence regarding a hospitalization in May 2002. He was diagnosed with coronary artery disease with angioplasty, hypertension, increased cholesterol and stress/anxiety. In an undated report, Dr. Sun C. Soung, an internist, noted treating appellant since 1999 for hypertension and hyperlipidemia.

Ms. Jones provided statements dated January 1, 2001 and December 30, 2002, in which she countered appellant's contentions. During the 1999 renovation, appellant did not have to work in three different locations.¹ A notice dated May 14, 2001 indicated that appellant was given a deferred seven-day suspension for failure to follow instructions and unacceptable conduct regarding a confrontation that occurred on April 24, 2001.

By decision dated January 9, 2003, the Office found that appellant established as a compensable factor of employment that in 1999 he had an increased workload. It denied the claim on the grounds that the medical evidence failed to establish that his condition was caused by this compensable factor of employment. On February 2, 2003 appellant requested a hearing that was held on October 29, 2003. Appellant testified regarding his contentions including that he was overworked while the employing establishment was being renovated. In a June 3, 2003 report, Dr. Soung reiterated his diagnoses, opined that appellant's work environment caused his condition and advised that he should not return to work. Dr. John J. Kohut, a Board-certified psychiatrist, provided an August 26, 2003 report in which he noted that appellant described feelings of being overwhelmed and overworked and diagnosed major depressive disorder, recurrent, generalized anxiety disorder with panic episodes, and obsession-compulsive disorder. He opined that appellant's symptomatology was directly related to persistent employment stress and could not return to work.²

By decision dated December 18, 2003, an Office hearing representative affirmed the January 9, 2003 decision, modified to find that appellant had not established a compensable factor of employment. On February 4, 2004 appellant requested reconsideration, again stating that he was overworked. He also submitted an October 26, 1999 report in which Dr. Soung

¹ Ms. Jones noted that, during the renovation, some postal services were moved next door and some several blocks away.

² Appellant also submitted reports from Mary Jane Crosby-Bennett, LCSW. The reports of a social worker, however, do not constitute competent medical evidence, as a social worker is not a "physician" as defined by 5 U.S.C. § 8101(2). *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

noted diagnoses of hypertension, hyperlipidemia and panic attack with anxiety neurosis. In a May 12, 2004 decision, the Office denied modification of the prior decision.

On May 3, 2005 appellant requested reconsideration and submitted time sheets dating from January 19 to November 12, 1999. These documented that appellant worked 40 hours per week but that on 13 occasions worked in 2 locations and on 1 occasion worked in 3 locations. By decision dated August 10, 2005, the Office denied appellant's reconsideration request on the grounds that the evidence and argument submitted were repetitious.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act³ 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.⁴ 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).⁵ 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; or (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.⁶ 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.⁷

ANALYSIS

The Board finds that the Office improperly denied appellant's request for review. In support of his May 3, 2005 reconsideration request, appellant submitted time sheets dating from January 19 to November 12, 1999, during a period when the employing establishment was being renovated. These demonstrated that on 13 weekly periods he worked in two locations and on one weekly occasion worked in three separate locations. Appellant has alleged that he was overworked, and Ms. Jones, his supervisor, stated that appellant had not worked in different locations while the employing establishment was being renovated. As these time sheets contradict Ms. Jones' statement, the Board finds them relevant and pertinent new evidence not previously considered by the Office regarding whether appellant established that he was

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ 20 C.F.R. § 10.608(b)(1) and (2).

⁷ 20 C.F.R. § 10.608(b).

overworked during this period of renovation.⁸ The case will therefore be remanded to the Office for a decision on the merits of appellant's claim. On remand, the Office should consider these time sheets, together with the previously submitted evidence of record, to determine if appellant has established that he sustained either an emotional condition or heart disease in the performance of duty causally related to factors of his federal employment.

CONCLUSION

The Board finds that the Office improperly denied appellant's request for a merit review pursuant to section 8128(a) of the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2005 be vacated and the case remanded to the Office for proceedings consistent with this decision of the Board.

Issued: March 8, 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

⁸ The Board has held that overwork may be a compensable factor of employment. *Sherry L. McFall*, 51 ECAB 436 (2000).