

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

EDWIN B. CADAG, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 05-1703
Issued: May 4, 2006**

Appearances:
Edwin B. Cadag, 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 August 9, 2005 appellant filed a timely appeal from the May 4, 2005 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Because more than one year has passed between the Office's last merit decision of April 14, 2004 and the filing of this appeal, on August 9, 2005, the Board does not have jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). Accordingly, the Board only has jurisdiction over the nonmerit issue.

ISSUE

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

FACTUAL HISTORY

On September 27, 2002 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an emotional condition due to threatening and harassing

letters from his supervisor. As appellant alleged that the claimed events happened in more than one day or shift, the Office adjudicated the claim as an occupational disease claim.

By decision dated April 8, 2003, the Office denied appellant's claim, finding that he had not established that his emotional condition was caused or aggravated by compensable factors of employment.

In a May 5, 2003 letter, appellant requested an oral hearing, which was scheduled for February 10, 2004 at 10:00 a.m. in the Jackson Federal Building, Seattle, Washington. However, pursuant to a February 22, 2004 request, the Office proceeded with a review of the written record. This included a review of the additional evidence appellant submitted.

By decision dated April 14, 2004, an Office hearing representative affirmed the April 8, 2003 decision, finding that appellant failed to establish any compensable factors of employment.

In a letter dated April 13, 2005, appellant requested reconsideration. He stated that the Office's hearing representative's decision was made without thoughtful review of his medical evidence and records as the Office hearing representative stated that it was "unnecessary."

Of record is an April 22, 2004 letter addressed to the Office hearing representative. Appellant advised that he had accepted a permanent job offer on October 17, 2002 due to a separate claim, which the Office had approved.¹ He stated that on October 23, 2002 he filed an Equal Employment Opportunity (EEO) complaint in the current case and had inquired upon its status in March and October 2003. After sending a second letter regarding the status of his EEO claim, appellant stated that the postmaster had showed up at his work and spoke to his immediate supervisor about him. Appellant stated that he was trained to drive a Dodge Caravan and made several collection runs. On March 3, 2004 appellant advised that he was offered a modified assignment as a general clerk. Appellant alleged that the change in craft from a letter carrier to a general clerk and the disregard of his October 2002 job offer had detrimental consequences on both a personal and professional level. He stated that, although he signed the March 3, 2004 letter under protest, he was disturbed and frustrated over these events and felt that management was retaliating against him for filing an EEO complaint.

By decision dated May 4, 2005, the Office denied appellant's request for reconsideration. The Office noted that appellant had discussed an administrative matter which was not connected to the current claim.

LEGAL PRECEDENT

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that, when an

¹ Appellant advised that the claim number was 142007753.

² 20 C.F.R. § 10.606(b)(2) (1999).

application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁴

ANALYSIS

The Board notes that the Office denied appellant's emotional condition claim on the basis that he did not establish any compensable employment factors.

Appellant has failed to establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. In his April 13, 2005 letter requesting reconsideration, appellant asserted that the Office's hearing representative's decision was made without a full review of the evidence of record and had stated that it was "unnecessary." In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician, when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶ The Office hearing representative conducted a review of the record and affirmed that appellant had not established any compensable factors with respect to his claim; therefore, a review of the medical evidence was not necessary.⁷ Appellant's contention regarding the medical evidence is without merit with regard to showing that the Office erroneously applied or interpreted a specific point of law or advancing a relevant legal argument not previously considered by the Office.

With regard to appellant's April 22, 2004 letter addressed to the Office's hearing representative, the Board notes that appellant's contentions appear to be related to his claim under file number 142007753. The submission of evidence which does not address the particular

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *Annette Louise*, 54 ECAB 783 (2003).

⁵ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); *Norma L. Blank*, 43 ECAB 384 (1993).

⁶ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004); *Norma L. Blank*, *supra* note 5.

⁷ See *Diane C. Bernard*, 45 ECAB 223, 228 (1993).

issue involved in the current case does not constitute a basis for reopening a case.⁸ Consequently, appellant's contentions are irrelevant to the instant claim.⁹

Thus, appellant has failed to establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Additionally, appellant did not submit any new and relevant evidence not previously considered by the Office. Therefore, under 20 C.F.R. § 10.608(b), the Office properly denied appellant's application for reopening his case for a review on its merits.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 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 *Kevin M. Fatzner*, 51 ECAB 407 (2000); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ To the extent that appellant's contentions pertain to claim number 142007753, appellant may submit any new evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999).