United States Department of Labor
Employees' Compensation Appeals Board

V.C., Appellant	)	
and	)	**Docket No. 07-425**
	)	**Issued: November 13, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Patchogue, NY, Employer	)	

Appearances:
Appellant, pro se
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 December 6, 2006 appellant filed a timely appeal of an August 30, 2006 decision of the Office of Workers' Compensation Programs, denying merit review of his claim. Since more than one year has elapsed between the last Office merit decision on January 13, 2005 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c), 501.3(d)(2) and 501.6(c) and (d).

ISSUE

The issue is whether the Office properly determined that appellant's April 18, 2006 application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a) and the implementing regulations at 20 C.F.R. § 10.606.

FACTUAL HISTORY

There have been several prior appeals in this case. In a decision dated February 19, 1999, the Board affirmed the Office's determination that appellant had not established an emotional

condition causally related to compensable work factors.[1] By decision dated July 3, 2002, the Board found that appellant was entitled to further merit review of the claim.[2] In a decision dated March 17, 2004, the Board again found that appellant was entitled to a merit review of his claim.[3] In the last appeal, the Board affirmed merit decisions dated July 2, 2004 and January 13, 2005, finding that appellant had not established causal relationship between his emotional condition and the accepted compensable work factors.[4] The history of the case is contained in the prior Board decisions and is incorporated herein by reference.

Appellant requested reconsideration of his claim in a letter dated April 18, 2006. He stated that he had new evidence identifying employment factors that contributed to his condition. The evidence submitted included a seniority roster dated June 25, 1994, a October 22, 1987 request to be returned to the Riverhead, New York Post Office when a full-time vacancy occurred, a June 1, 1994 letter from the employing establishment advising appellant to submit a detailed medical report and a June 16, 1994 letter from the employing establishment advising appellant that he was not the senior clerk electing to exercise retreat rights to the Riverhead Post Office.

With respect to medical evidence, appellant submitted an August 22, 2002 report from Dr. Thomas McMath, a psychologist,[5] who diagnosed delusional disorder, persecutory type. In addressing the issue of whether appellant had a psychiatric disability causally related to treatment by the Department of Veterans Affairs in June 1992 (when appellant was hospitalized), Dr. McMath noted that appellant complained of being "malevolently treated by conspiring supervisors and coworkers" at the employing establishment. He indicated that appellant's disorder was aggravated by his involuntary transfer to a locked psychiatric ward in June 1992, as he developed a delusion he was sexually assaulted. The psychologist also concluded that appellant did not meet the criteria for post-traumatic stress disorder. Appellant also submitted a December 11, 2002 report from Dr. McMath that was previously submitted.

By decision dated August 30, 2006, the Office determined that the application for reconsideration was insufficient to warrant further merit review of the claim.

[1] Docket No. 97-925 (issued February 19, 1999).

[2] Docket No. 04-303 (issued July 3, 2002).

[3] Docket No. 04-303 (issued March 17, 2004).

[4] Docket No. 05-836 (issued March 21, 2006).

[5] The first page of the report was apparently not submitted. The August 22, 2002 report had previously been submitted, but as the Board noted in its March 21, 2006 decision, the report was not signed and it was not clear whether it was prepared by a physician under the Federal Employees' Compensation Act. The August 22, 2002 report submitted with the application for reconsideration did include a signature from Dr. McMath, and also included a brief paragraph regarding post-traumatic stress disorder that was not included in the previously submitted report.

LEGAL PRECEDENT

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[6]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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 relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[7]

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 the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[8]

ANALYSIS

In the present case, appellant had filed a claim alleging an emotional condition causally related to his federal employment. The Office had accepted three employment factors as compensable: (1) unloading trucks in derogation of work restrictions, (2) administrative error in terminating appellant's employment, and (3) administrative error in requiring use of annual leave in the weeks prior to April 29, 1994. As noted above, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2) to require the Office to reopen the case for review of the merits. He did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

The April 18, 2006 application for reconsideration stated that new evidence was being submitted with respect to employment factors. It appeared that appellant was alleging that he was submitting new evidence with respect to an additional employment factor regarding his attempt to return to the Riverhead Post Office. The only evidence that represented new evidence was the October 22, 1987 request to return to Riverhead when a full-time regular clerk vacancy occurred. The seniority roster and the June 1 and 16, 1994 letters, for example, were previously submitted to the record prior to the January 13, 2005 merit decision. The October 22, 1987

[6] 20 C.F.R. § 10.605 (1999).

[7] *Id*. at § 10.606(b)(2).

[8] *Id*. at § 10.608.

request does not constitute relevant and pertinent evidence regarding a compensable work factor. It provides no relevant information on the issue of error or abuse in an administrative matter.[9]

Appellant also submitted an August 22, 2002 signed report from Dr. McMath. This would constitute new medical evidence, since the Board had found the previously submitted copies of the report did not constitute medical evidence due to the lack of a signature and supporting evidence that the report was prepared by a physician under the Act. To require the Office to reopen the case for merit review, however, the evidence must also be relevant and pertinent to the issue presented. The medical issue presented was causal relationship between a diagnosed condition and the accepted employment factors. Dr. McMath provides no opinion on this issue. He does not discuss any of the accepted employment factors or offer an opinion on causal relationship between the diagnosed delusional disorder and federal employment. While the evidence does not have to be of sufficient probative value to establish the claim, it must be relevant and pertinent evidence on the issue to require the Office to reopen the claim for merit review.

The Board accordingly finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did submit new evidence, but it is not relevant and pertinent to the claim. The Office properly denied the application for reconsideration without reopening the claim for review of the merits.

CONCLUSION

Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly denied the application for reconsideration without merit review of the claim.

[9] A compensable work factor with respect to an administrative matter can be established only if the evidence shows error or abuse by the employing establishment. *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2006 is affirmed.

Issued: November 13, 2007
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