

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

D.A., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL)
WEAPONS CENTER, China Lake, CA,)
Employer)

**Docket No. 08-56
Issued: April 1, 2008**

Appearances:

*Dr. Larry Coates, Ph.D., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated May 11, 2007, denying further merit review of her claim. The most recent merit decision of the Office is dated April 6, 2006, which denied her claim for a recurrence of disability beginning June 23, 2005. Because more than one year has elapsed between the most recent merit decision of the Office and the filing of this appeal on October 5, 2007, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a February 3, 2004 decision, the Board found that appellant established entitlement to wage-loss compensation for time lost from work due to medical appointments during the period September 26 to November 13, 2000. However, appellant did not establish entitlement to compensation for other dates claimed from April 13, 1994 to September 6, 2001. The facts and the history contained in the prior appeal are incorporated by reference.

In a March 28, 2005 statement of reasonable accommodation, Daniel Care, a financial administrator with the employing establishment, noted that appellant was given accommodations which included keys to the office so that she could work as necessary, the ability to work at a specific location that she preferred, the ability to discuss her needs with her directors in an “open door” policy, the ability to take annual leave and sick leave as needed, a simplified workload, daily monitoring and encouragement to discuss issues pertaining to her medical condition.

Appellant subsequently filed several CA-7 forms for disability for the period March 29 to June 15, 2004.

On April 15, 2005 appellant filed an occupational disease claim alleging major depression. She first became aware of the disease on July 29, 1997. Appellant noted that she already had an approved claim.

In a May 27, 2005 report, Dr. Gary Freedman, a Board-certified psychiatrist and neurologist, noted that he had last evaluated appellant on June 3, 2004. At that time, appellant informed him that she had accepted a job in Japan and was relocating. Dr. Freedman had previously diagnosed major depressive disorder and he stated that, despite being unable to examine appellant “face to face,” her condition did not remain “static.” Appellant made arrangements to leave her present job situation in Japan as she indicated that “she does not believe that she can survive in her current situation and in lieu of completely falling apart, has made arrangements to return to the United States to her previous residence in Ridgecrest, California to try and find some measure of stability in her life.” Dr. Freedman opined that appellant was “unable to perform useful and efficient service because of a well-documented disease, in this case major depressive disorder recurrent, either in her current position or within a vacant position.”

Appellant filed an additional Form CA-7, claiming compensation for the period June 26, 2005 to the present. On July 26, 2005 she filed an occupational disease claim alleging severe depression and stress and teeth grinding. Appellant first realized the disease or illness was caused or aggravated by her employment on December 15, 1997.

¹ Docket No. 03-2174 (issued February 3, 2004). Appellant’s November 24, 2000 decision was accepted by the Office for major depression.

By letter dated August 8, 2005, the Office advised appellant that it had received her claim for a recurrence of disability.² The Office advised appellant of the evidence needed to support her claim and requested that she submit additional evidence within 30 days.

In an August 11, 2005 report, Dr. Freedman noted that appellant had returned to the United States and that he had examined her on July 7, 2005. He diagnosed major depressive disorder recurrent with intermittent suicidal ideation and advised that appellant was exposed to a severe workload and other work stressors relative to her experience in Japan. Dr. Freedman opined that she was totally disabled.

In an August 16, 2005 report, Dr. Wade W. Hayashi, a dentist, opined that appellant was in need of significant dental work, including gum treatments and a night guard. He related that appellant's condition was caused by job stress.

In an August 18, 2005 statement, appellant noted that her claim was previously accepted for major depression, and the employing establishment had accommodated her condition by allowing her to have hourly breaks, quiet time and a reduced workload. However, her position was abolished due to a reduction-in-force. Appellant was subsequently offered a position in Japan, for a one-year obligation. She alleged that the employing establishment promised to accommodate her restrictions. Appellant moved to Japan on June 26, 2004 and experienced high stress, a high workload, and an unprofessional and hostile environment.

In a March 18, 2006 statement, appellant noted that June 23, 2005 was her last day of work in Japan. She returned to the United States as she was forced to resign "due to the extremely high workload." Appellant alleged that her work accommodations were not honored in Japan and she filed for disability retirement prior to leaving. She stated that she filed her present claim to be compensated for lost wages from June 2005 to February 2006. Appellant completed a Form CA-7 for this time frame.

By decision dated April 6, 2006, the Office denied appellant's claim for a recurrence of disability finding that the medical evidence was insufficient to establish that her disability for work beginning June 23, 2005 was due to the accepted work injury. Appellant was advised that the new evidence did not establish a recurrence because she was exposed to new work factors in Japan and that she should file a new occupational disease claim for her emotional condition, as it was considered a new injury. The Office also advised appellant that she could file a new occupational disease claim for her teeth grinding condition.

By letter dated April 19, 2006, appellant requested reconsideration. Regarding her claim for a recurrence, she alleged that her illness had never resolved or lessened, but rather had worsened. Appellant again noted that, when her claim was accepted, she was given work accommodations. When she accepted her overseas position, she was told there were medical resources to meet the needs of her illness, but that none were available. There was a physician who had "skills with deep breathing exercises" but that a Board-certified psychologist was not available. Appellant alleged that the workload was heavier, she had no support system, family, or Equal Employment Opportunity (EEO) accommodations, and that she became more suicidal

² The Office treated appellant's occupational disease claim as a claim for a recurrence of disability.

and depressed. She noted that June 23, 2005 was her last day of work overseas and that she was “forced to resign from government service due to the extremely high workload (workload higher than in previous position).” Appellant returned home to seek treatment with her physicians. She indicated that a doctor’s report would be forthcoming and that her medical condition of “bruxism” would be addressed. Appellant requested compensation for lost wages from June 2005 to February 2006 and assistance with leave buyback.

By decision dated June 12, 2006, the Office denied appellant’s request for reconsideration without a review of the merits on the grounds that her request was repetitive and irrelevant. The Office found that her request failed to show that the Office erroneously applied or interpreted a specific point of law, and failed to advance relevant legal evidence not previously considered by the Office and was thus insufficient to warrant review of its prior decision.

On January 29, 2007 appellant filed a Form CA-7 for the period July 26, 2006 to the present. She also filed a Form CA-7 for the period June 28 to December 17, 2005.

On February 12, 2007 appellant requested reconsideration. She indicated that she would be forwarding an additional doctor’s report.

By decision dated May 11, 2007, the Office denied appellant’s request for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office also noted that no additional medical report was received.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees’ Compensation Act,³ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(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 [the Office].”⁴

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁵

ANALYSIS

Appellant disagreed with the denial of her claim for a recurrence and requested reconsideration on February 12, 2007. The underlying issue on reconsideration was whether she sustained a recurrence of disability after June 23, 2005 causally related to her accepted December 15, 1992 claim, accepted for major depression. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether her disability after June 23, 2005 was causally related to her accepted major depression. She did not submit any new medical evidence with regard to whether her disability after June 23, 2005 was causally related to her accepted 1992 claim. Appellant requested reconsideration on February 12, 2007 and noted that a medical report would be “forthcoming.” However, no additional report was received. Appellant did not make any other arguments.

Consequently, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office; nor has she shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously considered by the Office. Therefore, the Office properly denied her request for reconsideration without conducting a merit review of the claim.

CONCLUSION

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

⁵ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2007 is affirmed.

Issued: April 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board