United States Department of Labor
Employees' Compensation Appeals Board

G.D., Appellant	)	
and	)	**Docket No. 07-1359**
	)	**Issued: January 28, 2008**
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS & APPEALS, Seattle, WA, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 25, 2007 appellant filed a timely appeal from the January 23, 2007 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's December 12, 2006 request for reconsideration.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board found that appellant failed to establish that his employer subjected him to a hostile work environment.[2] It affirmed the denial of his claim for an emotional condition.[3]

On November 23, 2005 appellant requested reconsideration. He explained that he was neither claiming nor seeking compensation for wage loss or medical benefits. Rather, appellant stated: "The only benefit which I seek is the recovery of leave which was expended during my illness of 2002[to 2003]." He argued that his supervisor's persistent discriminatory treatment and harassment constituted compensable work factors that caused an aggravation of his gastrointestinal condition. Appellant argued that his additional case assignments, more complex assignments, special law case assignments and special clerical typing assignments were measured by unfair, arbitrary case production standards which aggravated his gastrointestinal condition. He concluded: "Therefore, I am entitled to [F]ederal [E]mployees' [C]ompensation [Act] benefits consisting of the right to buy back the leave that I was forced to expend."

In a decision dated December 15, 2005, the Office granted appellant's request and reviewed the merits of his case. The Office denied modification of its prior decision. The Office noted no evidence establishing error or abuse on the part of the employing establishment and no documentation on file to indicate an increase in work load, production quota or changes in assignments.

On December 12, 2006 appellant again requested reconsideration. He repeated that he was not seeking any benefits under the Act, but sought to buy back leave. Appellant explained that his condition had improved and that he was now working in a higher-level position. "The buy back of leave," he explained, "will make a difference in claimant's retirement, if he lasts that long. If he does not, the buy back of leave will be a loss, but claimant is willing to take the risk."

Appellant also contended that the Office erroneously framed the issue in terms of whether he sustained an emotional condition, when he was arguing instead that the performance of his duties aggravated his preexisting physical condition. He argued that overwork aggravated his preexisting condition after his new supervisor imposed new raw-number *de facto* monthly case writing quotas in June 2001, quotas that he felt were unfair and in violation of long-standing policies and practices. Appellant argued that the situation worsened in early 2002 when the supervisor assigned an unqualified typist to him causing him to spend significant time correcting errors, which cut into the time needed to do his own work, violating two memoranda of understanding and causing him to work in excess of 50 hours a week for over a year.

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[1] Docket No. 04-1986 (issued January 5, 2005).

[2] Appellant charged his supervisor with retaliatory harassment for his Equal Employment Opportunity (EEO) complaints, a pattern of harassment that was planned to set him up for failure under some artificial unwritten numerical standard. He stated that his disability "arose as a result of my supervisor's actions which aggravated a physical condition of mine." In support of his claim, appellant submitted a memorandum he wrote to his supervisor regarding "Harassment in Retaliation of my EEO Complaints."

[3] The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant submitted a declaration describing the overwork that aggravated his preexisting condition. He submitted lists of cases. Appellant attached samples of proofed work product. He submitted a partial and unsigned stipulation for compromise settlement between him and the Commissioner of the Social Security Administration. Appellant submitted a memorandum to his supervisor regarding "Harassment In Retaliation of my EEO Complaints." He submitted his brief from the prior appeal. Appellant also submitted a February 5, 2004 medical report attributing the aggravation of his dyspepsia to supervisors increasing his work loads, increasing his writing quotas and other changes in July 2001.

In a decision dated January 23, 2007, the Office denied appellant's request for reconsideration. The Office noted that a majority of the documents appellant submitted were duplicates of evidence previously considered. The only new document was an unsigned and undated court document, which could not be considered final or relevant. As appellant proffered no new and relevant evidence pertinent to the issue at hand, the Office denied a merit review of his case.

On appeal, appellant argued that the Office improperly denied his request for reconsideration and that he was entitled to buy back the leave I extended when I was ill.

LEGAL PRECEDENT

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[4] 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."[5]

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.[6]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[7] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence 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

[4] 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.605 (1999).

[6] *Id*. at § 10.606.

[7] *Id*. at § 10.607(a).

will deny the application for reconsideration without reopening the case for a review on the merits.[8]

ANALYSIS

On appeal, appellant states that he is only seeking to repurchase the leave he used in 2002 and 2003. However, neither the Office nor the Board can grant the remedy appellant seeks. The Act does not regulate the repurchase of leave. That is a matter between appellant and the employing establishment.[9] Neither the Office nor the Board can compel the employing establishment to change its leave records.[10] The Board has no jurisdiction in the matter.

The Board finds that appellant's December 12, 2006 request for reconsideration meets none of the criteria for obtaining a merit review of his claim for compensation.

Appellant's December 12, 2006 request for reconsideration charged the Office with misrepresenting his claim as one for an emotional condition. But this does not show that the Office erroneously applied or interpreted a specific point of law. It is immaterial to the denial of his claim whether his emotional reaction caused a disabling psychiatric condition or an aggravation of a physical condition. The emotional reaction must arise from a compensable and established factor of employment regardless. That was the basis of the Office's denial, and the Board affirmed.

Appellant devoted the bulk of his request for reconsideration to the argument that overwork aggravated his preexisting condition. This is the same argument as previously considered by the Office and the Board. It does not warrant a reopening of his case for further merit review.

Appellant revisited the complaints with his supervisor. He again argued that his supervisor's discriminatory treatment and harassment were compensable. But these arguments, and the compromise settlement and the memorandum on "Harassment In Retaliation of my EEO Complaints," are not new. Because appellant's request for reconsideration does not meet at least one of the standards for obtaining a merit review of his claim for compensation, the Board will affirm the Office decision denying that request.

[8] *Id*. at § 10.608.

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900.13.a. (January 1991): "When an employee is injured and elects to use sick or annual leave during the period of disability, the employee may at a later date, with the concurrence of the employing agency, claim compensation for the period of disability and buy back the leave used. This procedure was reviewed by the Comptroller General in 1953 and considered permissible. The determining factor is whether the employing agency is willing and able to change the leave records from leave-with-pay to leave-without-pay."

[10] *Cf. Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995) (given a lump sum for the annual leave he accrued when he retired, the claimant, once again employed, sought to have his annual leave reinstated).

CONCLUSION

The Board finds that the Office properly denied appellant's December 12, 2006 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2008
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