



## **FACTUAL HISTORY**

On December 23, 2004 appellant, then a 47-year-old mail handler, filed a claim for an emotional condition. He alleged that on May 10, 2004 Keith Pomeranski, his supervisor, asked him to hit Mr. Pomeranski so that he could fire appellant. Mr. Pomeranski told another employee that appellant had threatened him. Appellant first became aware of his condition on December 13, 1997 but did not explain what occurred on that date. On January 21, 2005 the Office asked appellant to submit additional evidence. It noted that a previous claim with a May 10, 2004 date of injury had been denied.<sup>2</sup>

In an August 17, 2004 statement, Rudy Rodriguez stated that on May 10, 2004 he stopped appellant who was driving past, to ask about the flat mail volume. Mr. Pomeranski approached and told appellant that he would be monitoring his breaks. Appellant responded that Mr. Pomeranski could watch him. In a July 19, 2004 statement, Bill Rodriguez stated that on May 10, 2004 appellant told him that he felt threatened and upset regarding Mr. Pomeranski's "threat" that he would be watching his work activities closely. Mr. Rodriguez stated that he was not a witness to any altercation between appellant and Mr. Pomeranski.

In a December 20, 2004 report, Dr. Todd Boffeli, an attending physician, diagnosed an adjustment disorder and severe recurrent depression. He stated that appellant provided a history that on May 10, 2004 a supervisor confronted him and told appellant, "Hit me." Appellant did not strike the supervisor but became upset and was placed on medical leave.

In decisions dated March 7 and November 25, 2005, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an emotional condition in the performance of duty. It noted that the July 19, 2004 statement from Mr. Rodriguez and appellant's August 13, 2004 statement had been submitted with the prior claims regarding the May 10, 2004 incident which had been denied. The Office found that the witness statements did not establish that Mr. Pomeranski asked appellant to strike him or that he lied to an employee about being threatened by appellant. The allegation that Mr. Pomeranski monitored appellant closely was found to be an administrative matter with no error or abuse established.

On September 14, 2006 appellant requested reconsideration. He reiterated his previous contentions.

By decision dated December 1, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant further merit review.

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<sup>2</sup> The record establishes that appellant filed a separate claim for an emotional condition sustained on March 12, 1997 when a coworker attempted to grab a mail container that he was moving. The 1997 claim was accepted for a single episode of adjustment disorder under Office file number 100465801. Appellant initially filed a claim for the incident on May 10, 2004 involving Mr. Pomeranski under file number 102033759. This claim was denied. His second claim for an injury related to the May 10, 2004 incident was assigned file number 102040454. Appellant indicated in his second claim that it was a recurrence of his accepted 1997 emotional condition.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>3</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by setting forth arguments that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and new pertinent evidence not previously considered by the Office.<sup>4</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

### **ANALYSIS**

In support of his request for reconsideration, appellant merely reiterated his previous contentions that the incidents on May 10, 2004 involving Mr. Pomeranski caused or aggravated his emotional condition. These allegations were previously considered by the Office. Therefore, they do not constitute relevant and pertinent evidence or relevant legal argument not previously considered by the Office.

The Board finds that appellant did not submit arguments or evidence showing that the Office erroneously applied or interpreted a specific point of law; advancing a relevant legal argument not previously considered; or constituting relevant and new pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2006 is affirmed.

Issued: January 23, 2008  
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