



## **FACTUAL HISTORY**

On February 16, 2000 appellant, then a 43-year-old mail handler/equipment operator, filed a claim for “stress/depression,” which allegedly arose on or about February 17, 1999.<sup>1</sup> He described the work environment as “deplorable” and he alleged that supervisors were encouraged to “harass and badger employees.” Medical evidence that accompanied the claim revealed a diagnosis of major depressive disorder, single episode, anxiety disorder and personality disorder.<sup>2</sup> The Office subsequently requested that appellant provide a more detailed account of the employment incidents that allegedly caused or contributed to his claimed condition.

In a statement dated May 3, 2000, appellant identified several employment incidents that occurred between December 1998 and October 1999, which purportedly contributed to his emotional condition. On December 8, 1998 he was accused of operating his tow motor in an unsafe manner.<sup>3</sup> Appellant believed the proposed disciplinary action stemming from the December 8, 1998 tow motor incident was retaliatory in nature. He also mentioned two attendance-related disciplinary actions that occurred on January 19 and February 12, 1999, which he said were eventually either reduced or rescinded. Another alleged incident involved a request for leave on February 16, 1999, which had initially been approved but later denied. Appellant also complained that the employing establishment had improperly denied a request for reasonable workplace accommodations. Additionally, he referenced a February 3, 1999 employing establishment memorandum limiting employee access to tow motors, which essentially reduced the number of eligible two motor operators by more than 25 percent. Appellant stated that this single action more than doubled his job stress. It was reportedly rescinded in March 1999. Lastly, appellant complained about the employing establishment’s failure to take action with respect to a nonproductive coworker in the flat operation section where he worked. He said he was the only tow motor operator and needed help, but nothing was done to alleviate the workload and stress he was dealing with on a daily basis.

Appellant submitted copies of various grievances he had filed, including settlement agreements and an arbitrator’s decision dated June 8, 1999. He also submitted documentation with respect to his denied request for a reasonable workplace accommodation.

In an August 17, 2000 decision, the Office denied appellant’s emotional condition claim because he had not established any compensable employment factors. It found that the majority of incidents appellant described were administrative or personnel matters and therefore, noncompensable.

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<sup>1</sup> Appellant stopped working on February 25, 1999; almost a year prior to filing the instant claim. According to the Office, he had previously filed three stress-related claims: xxxxxx137 (reported date of injury-DOI 4/23/91); xxxxxx401 and xxxxxx450 (DOI August 7, 1998). It further indicated that one of appellant’s claims was accepted for temporary aggravation of anxiety and personality disorders and he had received compensation for a closed period ending January 3, 1992 (xxxxxx137).

<sup>2</sup> Appellant was under the care of Mark W. Gidney, a licensed psychologist.

<sup>3</sup> Appellant was reportedly driving in the wrong direction down a one-way aisle.

Appellant requested reconsideration on March 16, 2006. He submitted additional documentation regarding his previously denied reasonable accommodation request. Appellant also submitted a May 12, 1998 grievance settlement as well as additional medical records. The Office reviewed the merits of the claim and denied modification by decision dated June 1, 2006.

On May 27, 2007 appellant filed another request for reconsideration. This latest request was accompanied by 34 pages of documents, many of which had previously been submitted. The newly submitted evidence included medical reports from Dr. Gidney dated October 2, 1997, April 9 and August 2, 1999. Appellant also submitted a May 13, 1999 report from Dr. Charles E. Wilson, the employing establishment's associate area medical director.<sup>4</sup> The Office also received a November 10, 1997 grievance settlement regarding time and attendance issues during the period of July 5 through September 26, 1997. Additionally, appellant submitted general information regarding the process for requesting a reasonable accommodation and a position description for custodial laborer.

In a decision dated December 31, 2007, the Office denied reconsideration. It found that the evidence submitted was either duplicative or irrelevant. Appellant also failed to show that the Office erroneously applied or interpreted a specific point of law and he did not advance a relevant legal argument not previously considered by the Office.

### **LEGAL PRECEDENT**

The Office has the discretion to reopen a case for review on the merits.<sup>5</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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 Office.<sup>6</sup> When an application for reconsideration 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.<sup>7</sup>

### **ANALYSIS**

Appellant's May 27, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Appellant

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<sup>4</sup> Dr. Wilson's report did not pertain to appellant, but to another employing establishment employee, Jim M. Wisch. Appellant claimed to have initially submitted this report with his March 16, 2006 request for reconsideration. However, the Office noted in its June 1, 2006 decision that Dr. Wilson's May 13, 1999 report was not in appellant's file.

<sup>5</sup> 5 U.S.C. § 8128(a) (2006).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2) (2008).

<sup>7</sup> *Id.* at § 10.608(b).

merely submitted the appeal request form that accompanied the Office's June 1, 2006 decision. He placed an "x" on the appropriate line for requesting reconsideration, but he did not otherwise elaborate on the grounds upon which he was seeking reconsideration. Therefore, appellant is not entitled to a review of the merits of his claim based on the first and second above noted requirements under section 10.606(b)(2).<sup>8</sup>

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any relevant and pertinent new evidence with his May 27, 2007 request for reconsideration. At oral argument, appellant questioned why the Office had not considered several medical reports authored by his psychologist, Dr. Gidney. In both the August 17, 2000 and June 1, 2006 merit decisions, it found that appellant had not established a compensable employment factor as the cause of his claimed emotional condition. Given the disposition of the claim, it was not obligated to address the medical evidence of record.<sup>9</sup> The issue on reconsideration was not whether the medical evidence demonstrated an employment-related psychiatric disorder, but whether appellant established a compensable employment factor. This is a factual and legal analysis of alleged employment incidents and not a medical issue. Accordingly, the Office properly found that the newly submitted medical reports from Dr. Gidney were not relevant to the issue on reconsideration.

Dr. Wilson's May 13, 1999 report regarding Jim Wisch's physical and psychiatric condition is similarly irrelevant. He merely reported the findings from an April 1999 fitness-for-duty examination. In Dr. Wilson's March 16, 2006 request for reconsideration appellant indicated that the employing establishment had granted Mr. Wisch a reasonable accommodation for his nonwork-related mental condition. To the extent appellant is arguing he was the victim of disparate treatment, Dr. Wilson's May 13, 1999 letter does not support that position. The document does not address what, if any, accommodation Mr. Wisch received. On its face, this document is simply some other individual's personal medical information.

The November 10, 1997 grievance settlement is also irrelevant to the issue on reconsideration. This particular grievance pertained to time and attendance issues that arose during the period July 5 through September 26, 1997. These incidents occurred outside the timeframe during which appellant's claimed emotional condition allegedly arose. In his May 3, 2000 statement, he indicated that the employment incidents that contributed to his condition occurred between December 1998 and October 1999. The earliest reported employment incident was the December 8, 1998 tow motor mishap. As such, the November 10, 1997 grievance settlement is not relevant to the current claim.

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<sup>8</sup> *Id.* at § 10.606(b)(2)(i) and (ii).

<sup>9</sup> To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors. See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

Appellant also submitted a job analysis for the position of custodial laborer as well as general information regarding reasonable accommodation requests. It is not readily apparent from these documents how he is aided in establishing a compensable employment factor. The Office found that this information is irrelevant and the Board agrees. The remaining documents appellant submitted on reconsideration were already part of the record. This includes documentation regarding numerous grievances and the denial of his request for a reasonable accommodation. Submitting additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.<sup>10</sup> The evidence that accompanied appellant's May 27, 2007 request for reconsideration was either duplicative or irrelevant. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>11</sup>

**CONCLUSION**

The Office properly denied appellant's May 27, 2007 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 31, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

<sup>11</sup> 20 C.F.R. § 10.606(b)(2)(iii).