

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

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**M.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Portland, OR, Employer**

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**Docket No. 08-1473  
Issued: January 8, 2009**

*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 April 24, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 28, 2007 denying his recurrence claim and a nonmerit decision dated April 7, 2008 denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and the nonmerit issue.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish a recurrence beginning September 27, 2007 causally related to an accepted emotional condition; and (2) whether the Office properly denied appellant's request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On September 14, 2003 appellant, then a 50-year-old customer service supervisor, filed an occupational disease claim alleging that his emotional condition was caused by his work environment. He first realized his condition and its relation to his employment in

September 2001. Appellant stopped work September 12, 2003 and returned to full-duty October 29, 2003.<sup>1</sup> At a hearing held January 4, 2005 appellant testified that he received medical treatment for his condition for about six months and was off work for two weeks. He testified that his condition improved, he was no longer seeking treatment, and he had returned to work. On May 11, 2005 the Office accepted appellant's claim for adjustment disorder with anxiety, resolved as of March 25, 2005.<sup>2</sup>

On September 28, 2007 appellant filed a claim for a recurrence of disability on September 27, 2007. He alleged that an involuntary shift change, pending administrative action and false and inappropriate allegations by employees at the employing establishment resulted in a partial recurrence of his anxiety, stress and adjustment disorder. Appellant did not stop work or lose any time following the recurrence.

In a letter dated October 22, 2007, the Office advised appellant of the definition of a recurrence. It requested that he provide, within 30 days, the necessary factual and medical evidence to establish his claim. No evidence was received.

By decision dated November 28, 2007, the Office denied appellant's recurrence claim on the grounds that no factual or medical evidence was provided.

On March 28, 2008 appellant requested reconsideration. He noted that since the November 28, 2007 denial of his claim, he received medical treatment for his condition. Appellant indicated that he was attaching medical reports from his physicians as well as documentation to support his claim and provided a list of attachments. The Office received copies of the March 25, 2005 decision of an Office hearing representative that directed acceptance of his initial claim. No additional medical or factual information was received.

By decision dated April 7, 2008, the Office denied appellant's request for reconsideration without further merit review of the claim.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup> A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.

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<sup>1</sup> On September 13, 2003 appellant also filed a traumatic injury claim alleging that his anxiety, depression and stress was caused by disparate treatment and a hostile work environment.

<sup>2</sup> The Office noted that appellant's testimony and medical evidence indicated that appellant was no longer seeking treatment of his accepted condition.

<sup>3</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.<sup>4</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>5</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that a claimant's claimed condition became apparent during a period of employment nor is his or her belief that the condition was aggravated by employment sufficient to establish causal relationship.<sup>6</sup> The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for adjustment disorder with anxiety, which resolved as of March 25, 2005. The record reflects he returned to full duty on October 29, 2003. Appellant filed a recurrence of disability claim September 28, 2007 alleging a partial recurrence of disability beginning September 27, 2007. He did not stop work. However, appellant did not submit medical evidence to establish that his disabling condition as of September 28, 2007 was causally related to his accepted injury. He did not submit any medical reports from a treating physician which explained why any disability or medical condition beginning September 27, 2007 was related to the accepted injury.

Appellant did not submit any medical evidence to support a recurrence of a medical condition or partial disability beginning September 27, 2007. These are objective findings to support a recurrence causally related to the accepted injury. He has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>8</sup> Consequently, appellant has not met his burden of proof to establish that he sustained a recurrence of disability or medical condition on September 27, 2007 causally related to his accepted employment injury.

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<sup>4</sup> *Id.* at § 10.5(y); see *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>6</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

<sup>7</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> See *Mary A. Ceglia* *supra* note 4.

## LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> Section 10.608(b) provides that 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>10</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>11</sup> Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>12</sup>

## ANALYSIS -- ISSUE 2

On reconsideration, he did not establish that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Thus, he 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>13</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), appellant did not submit any medical evidence relevant to whether he sustained a recurrence of disability causally related to his accepted employment injury. His submission of the March 25, 2006 Branch of Hearings and Review's decision, which found appellant's emotional condition was causally related to his employment, is irrelevant to the issue of a recurrence of disability or after September 27, 2007. The Board has held that the submission of evidence irrelevant to the issue involved is not a basis for reopening a case.<sup>14</sup> Appellant did not submit relevant and pertinent new evidence not previously considered by the Office and it properly denied his reconsideration request.

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<sup>9</sup> 20 C.F.R. § 10.606(b)(2).

<sup>10</sup> 20 C.F.R. § 10.608(b).

<sup>11</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>12</sup> *Kevin M. Fatzner*, 51 ECAB 407 (2000).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

<sup>14</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability or a medical condition beginning September 27, 2007 causally related to the accepted employment injury. The Board also finds that the Office properly denied appellant's request for reconsideration.<sup>15</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 7, 2008 and November 28, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 8, 2009  
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

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<sup>15</sup> On appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c).