

FACTUAL HISTORY

This is the third appeal in this case.¹ By decision dated September 26, 2007, the Board affirmed a March 1, 2007 decision upholding the denial of appellant's claim for disability after April 21, 2004. By decision dated February 3, 2006, the Board found that the Office met its burden of proof to terminate his compensation benefits effective April 21, 2004 on the grounds that his accepted temporary aggravation of obsessive compulsive disorder had resolved. The Board also found that appellant did not meet his burden of proof to establish that he had continuing employment-related disability after April 21, 2004. The law and the facts of the previous Board decisions are incorporated herein by reference.

On August 31, 2008 appellant requested reconsideration. Through his attorney, in an August 19, 2008 statement, he argued that the Office made errors in the development of his claim in the associated case, OWCP File No. xxxxxx766, including errors regarding the initial acceptance of his claim in OWCP File No. xxxxxx766, errors in administratively combining File No. xxxxxx766 with File No. xxxxxx866 and closing xxxxxx766,² errors in failing to adjudicate a claim for a consequential injury of depression, a defect in a February 21, 2001 statement of accepted facts, errors regarding leading questions presented to an impartial medical specialist in 2003 and errors in accepting reports from the impartial medical specialist without requesting additional medical rationale.³

By decision dated September 29, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁶

¹ See Docket No. 07-1148 (issued September 26, 2007); Docket No. 05-1707 (issued February 3, 2006).

² The Office combined the files for File No. xxxxxx766 and File No. xxxxxx866 on February 21, 2001.

³ The record shows that the Office requested and received supplemental reports dated December 29, 2003 and January 31, 2004 from the impartial medical specialist clarifying his initial November 18, 2003 report.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8128(a).

⁶ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

On August 31, 2008 appellant requested reconsideration of the denial of his claim for disability after April 21, 2004. He submitted a written statement dated August 19, 2008. Appellant argued that errors were made in the Office's development of his 1989 claim in the associated case, OWCP File No. xxxxxx766, errors in administratively combining File No. xxxxxx766 with File No. xxxxxx866 and closing xxxxxx766, errors in failing to adjudicate a claimed consequential injury of depression, a defect in a February 21, 2001 statement of accepted facts, errors in presenting leading questions to an impartial medical specialist in 2003 and 2004 and errors in accepting reports from the impartial medical specialist without requesting additional medical rationale. These arguments do not address the issue of whether appellant established that his disability after April 21, 2004 was causally related to his accepted temporary aggravation of obsessive compulsive disorder. Additionally, several of these arguments were addressed in previous decisions.¹¹ Because appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office, 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.

⁷ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *See* Board decisions dated February 3, 2006 and September 26, 2007, Office decisions dated April 21, 2004, July 19, 2005 and March 1, 2007. Appellant's arguments on appeal regarding the February 21, 2001 statement of accepted facts and leading questions are new. However, the arguments are not relevant and pertinent to the issue of whether he was disabled after April 21, 2004 due to his accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2008 is affirmed.

Issued: July 10, 2009
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