United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 09-223**
	)	**Issued: July 21, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 29, 2008 appellant filed a timely appeal from the April 23, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Because more than one year has elapsed from the last merit decision dated August 27, 2007 to the filing of this appeal, the Board lacks jurisdiction over the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without a merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 29, 2005 appellant, then a 52-year-old mail handler, filed Form CA-2, an occupational disease claim for compensation, alleging that his stress-related condition was due to factors of his federal employment. He indicated that he was first aware of his condition on May 1, 2005 and realized that it was caused or aggravated by his employment on

September 16, 2005. On his claim appellant reported that his hypertension medication had to be increased or changed. He also stated that, since his employment, he became an insulin-dependent diabetic. The Office received appellant's October 14, 2005 letter detailing his allegations, statements from the employing establishment, leave records, a disability claim form statement from Kanawha Insurance Company, his original application for employment and a chart note from his physician noting he was being treated for generalized anxiety disorder and panic disorder (stress) since August 5, 2005.

On November 9, 2005 the Office advised appellant that the information submitted was insufficient to establish his claim. It requested additional details regarding the alleged employment events, as well as a medical report, with a diagnosis and an opinion as to how the diagnosed condition was causally related to those events.

The Office received medical reports from appellant's physician along with various statements from the employing establishment.

By decision dated February 17, 2006, the Office denied the claim finding that there was insufficient evidence to establish a factual basis of the claim. It determined that appellant had not presented sufficient evidence establishing a compensable employment factor in the performance of duty.

In a March 20, 2006 letter, appellant requested reconsideration. The Office received additional factual and medical evidence. By decision dated June 13, 2006, it denied modification of the prior decision. The Office found that appellant had not provided any evidence of compensable factors of employment.

On October 13, 2006 appellant requested reconsideration and submitted additional factual information. By decision dated August 27, 2007, the Office reviewed the merits of the claim and denied modification of its previous decision.

On September 11, 2007 appellant filed another request for reconsideration. He submitted April 19, 2006 to August 1, 2007 medical records from his physician.

In a decision dated April 23, 2008, the Office denied reconsideration. It found that appellant failed to show that the Office erroneously applied or interpreted a specific point of law, he did not advance a relevant legal argument not previously considered by the Office and the evidence submitted was not relevant.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[1] the Office 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

[1] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[2] 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.[3] 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.[4] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[5]

ANALYSIS

Appellant's September 11, 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 placed a check mark on the appropriate line for requesting reconsideration, but he did not otherwise elaborate on the grounds upon which he was seeking reconsideration. Therefore, 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).

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 September 11, 2007 request for reconsideration. On appeal, appellant argues that he sent valid factual medical files and did not understand how the Office could deny the statements submitted from a psychiatrist. By decisions dated February 17 and June 13, 2006 and August 27, 2007, the Office denied appellant's claim on the basis he had not established a compensable employment factor as the cause of his emotional condition. Given the disposition of the claim, the Office is not obligated to address the medical evidence of record.[6] The underlying issue is not whether the medical evidence demonstrated an employment-related psychiatric disorder, but whether appellant submitted sufficient factual evidence to establish a compensable employment factor. This is a factual and legal analysis of alleged employment incidents and not a medical issue. Appellant's medical submissions on reconsideration are not relevant to this underlying factual issue. Accordingly, the Office properly found that the newly submitted April 19, 2006 medical record from appellant's physician was not relevant to the issue on reconsideration.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his September 11, 2007 request for reconsideration.

[2] 20 C.F.R. § 10.606(b)(2).

[3] *Id.* at § 10.607(a).

[4] *Id.* at § 10.608(b).

[5] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[6] 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).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2008 is affirmed.

Issued: July 21, 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