

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

B.H., Appellant)	
)	
and)	Docket No. 09-2037
)	Issued: April 12, 2010
U.S. POSTAL SERVICE, POST OFFICE, Fort Washington, MD, Employer)	
)	

Appearances: *Case Submitted on the Record*
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2009 appellant filed a timely appeal from a February 26, 2009 decision of the Office of Workers' Compensation Programs that denied merit review. Because more than one year has elapsed between the last merit decision dated December 6, 2007, and the filing of this appeal on August 4, 2009, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a). On appeal appellant, through counsel, asserts that he was entitled to a review on the merits of his claim for wage-loss compensation for the period May 15, 2004 through September 1, 2006 and that the medical evidence of record unequivocally established that appellant was disabled for this period.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated February 22, 2007, the Board found appellant had established a compensable factor of employment and remanded

the case to the Office for a review of the medical evidence in his emotional condition claim.¹ The law and facts of the previous Board decision are incorporated herein by reference.

Subsequent to the Board's February 22, 2007 decision, on May 15, 2007 the Office accepted that appellant sustained employment-related aggravation of panic disorder and precipitation of major depressive disorder, and advised him to file Form CA-7 claims for compensation. Appellant thereafter filed claims for compensation covering the period May 15, 2004 to April 5, 2007.² By letter dated July 9, 2007, the Office advised appellant that it had reviewed the medical evidence and found that it did not contain a reasoned opinion discussing the specific periods of claimed disability.³ It requested that appellant submit a reasoned medical report from his attending psychiatrist, which explained how and why he was disabled from work, based on the accepted factor of employment, that his medical condition was inappropriately discussed by his supervisor.

In a report dated July 27, 2007, Dr. Sheehan advised that with a reasonable degree of medical certainty appellant was temporarily totally disabled for the periods May 15, 2004 to April 29, 2005, May 7, 2005 to March 18, 2006 and August 19 to September 1, 2006 "due to the aggravation of his preexisting major depressive and panic disorder from the accepted postmaster's employment factor discussion of [his] medical condition with coworkers in a public work location." He concluded that the public humiliation and a hostile work environment led to total partial temporary disability and that appellant needed continued psychiatric care.

The Office paid wage-loss compensation for the periods August 19 through September 1, 2006 and December 23, 2006 through January 5, 2007. By decision dated December 6, 2007, it reviewed the medical evidence of record and denied appellant's claim for monetary compensation for the period May 15, 2004 to September 1, 2006. On November 25, 2008 appellant, through counsel, requested reconsideration and resubmitted Dr. Sheehan's July 27, 2007 report. Appellant's attorney argued that the medical evidence of record unequivocally established entitlement to wage-loss compensation. In a February 26, 2009 decision, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant medical evidence, noting that it had previously reviewed Dr. Sheehan's July 27, 2007 report and the arguments he presented concerning total disability.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ vests the Office with discretionary authority to determine whether it will review an award for or against compensation,

¹ Docket No. 06-2133 (issued February 2, 2007). The Board found that the additional claimed factors were not compensable.

² The record indicates that appellant worked part time for some of this period.

³ The Office noted that the last medical report received, a July 25, 2005 report from Dr. Patrick J. Sheehan, a Board-certified psychiatrist, did not discuss periods of disability, and that an August 27, 2004 report from Dr. Darryl Dillman, also Board-certified in psychiatry, advised that appellant's condition worsened due to a May 12, 2004 work incident, which was not accepted as employment related.

⁴ 5 U.S.C. §§ 8101-8193.

either under its own authority or on application by a claimant.⁵ Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.⁷ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of the Office dated February 26, 2009 denying appellant's applications for review. Because more than one year had elapsed between the date of the most recent merit decision in this case, the Office decision dated December 6, 2007 and the filing of appellant's appeal with the Board on August 4, 2009, the Board lacks jurisdiction to review the merits of appellant's claim.⁹

With his November 25, 2008 reconsideration request, appellant argued that the Office erred in denying merit review and that the medical evidence unequivocally established his claim for wage-loss compensation. Although counsel purports to advance a legal argument not previously considered, his argument amounts to the equivalent of a request to reweigh the evidence of record, and arguments that repeat those previously of record have no evidentiary value and do not constitute a basis for reopening a case.¹⁰ In its December 6, 2007 merit decision, the Office weighed the medical evidence of record and found that it was insufficient to establish entitlement to wage-loss compensation for the claimed periods. Appellant therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, he was 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).¹¹

With respect to the third above-noted requirement under section 10.606(b)(2), on reconsideration appellant submitted a July 27, 2007 report from Dr. Sheehan. This report had

⁵ *Id.* at § 8128(a).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Id.* at § 10.608(b)(1) and (2).

⁸ *Id.* at § 10.608(b).

⁹ *Id.* at § 501.3(d)(2).

¹⁰ *M.E.*, 58 ECAB 694 (2007).

¹¹ 20 C.F.R. § 10.606(b)(2).

previously been reviewed by the Office, and evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.¹²

As appellant did not show that the Office erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his reconsideration request.¹³

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹⁴

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2009 be affirmed.

Issued: April 12, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² *Freddie Mosley*, 54 ECAB 255 (2002).

¹³ *Supra* note 7.

¹⁴ The Board notes that Office procedures provide that when a reconsideration decision is delayed beyond 90 days and the delay jeopardizes the claimant's right to have review of the merits of the case by the Board, the Office should conduct a merit review. *Janice M. Hatcher*, 55 ECAB 155 (2003). In this case, however, appellant was not jeopardized as the merit decision was issued on December 6, 2007 and appellant did not request reconsideration until November 25, 2008.