United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket No. 09-2115**
	)	**Issued: August 6, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Ken Claxton, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2009 appellant filed a timely appeal from a March 12, 2009 nonmerit decision of the Office of Workers' Compensation Programs. Because more than one year elapsed between the last merit decision dated February 13, 2006 and the filing of this appeal on August 17, 2009, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.[1]

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

[1] For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On December 7, 2005 appellant, a 49-year-old letter carrier, filed a traumatic injury claim, alleging that he sustained a stress-related condition on December 6, 2005 when he was called into his supervisor's office for an investigative interview.

In a December 14, 2005 statement, the employing establishment controverted the claim, contending that appellant's condition was self-generated.

On January 11, 2006 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits.

In a statement received by the Office on February 8, 2006, appellant asserted that his supervisor engaged in harassment and retaliation because appellant filed an Equal Employment Opportunity (EEO) claim against him.

In a January 26, 2006 report, Dr. Steven Klein, a family practitioner, stated that appellant demonstrated signs of depression and anxiety. He indicated that these symptoms were attributable to his job requirements and to employment relationships.

In a decision dated February 13, 2006, the Office denied appellant's claim on the basis that he failed to establish a compensable factor of employment.

On March 12, 2006 appellant requested an oral hearing, which was held on August 31, 2006.

Appellant submitted a September 7, 2005 copy of the EEO grievance and proposed union resolution. The union stated that management was singling out his and other Hispanic employees by asking them to provide documentation to support absences for sick leave.

At the hearing appellant contended that he sustained a traumatic injury because he was confronted by his supervisor on December 6, 2005. He reiterated that he was called into his supervisor's office that day and disciplined in retaliation for filing the EEO claim. Appellant contended that he was treated in a discriminatory manner, subjected to harassment and intimidation and experienced a hostile work environment.

In an August 30, 2006 report, Dr. Stephen Kloeris, a family practitioner, stated that appellant was experiencing depression with components of anxiety and agitation. He advised that the conditions developed due to appellant's work environment and relations with his supervisors and coworkers, in addition to his job requirements.

Appellant submitted an October 4, 2006 document pertaining to a formal resolution of his EEO claim, signed by representatives from management and his union. The document provided that: "Management will cease and desist treating [appellant] unfairly ... cease harassment and maintain a mutual respect and dignity atmosphere [sic]."

By decision dated November 17, 2006, an Office hearing representative affirmed the February 13, 2006 decision.

By letter dated November 8, 2007, appellant requested reconsideration. He reiterated that he sustained an injury on December 6, 2005 and submitted a traumatic injury claim because it was the form that management provided him. Appellant stated that he had reviewed the case file and noted that several medical reports were missing. He advised that he was placed on disability from November 1 to 30, 2005 due to stress and would resubmit the reports. Appellant argued that the October 4, 2006 settlement agreement constituted an admission by management that it had engaged in harassment and treated him unfairly.

Appellant submitted a Form CA-2 completed on August 3, 2007, received by the Office on November 14, 2007. He alleged that he sustained an occupational disease which he first became aware of on November 1, 2005. Appellant first realized that he had a disease or illness caused or aggravated by his employment as of November 1, 2005. He alleged that management created a hostile workplace.

In a January 25, 2006 form report, Dr. Kloeris diagnosed work-related depression and anxiety. He stated that appellant sustained his condition on December 6, 2005 and would be able to return to modified work as of January 30, 2006, but would not be able to work overtime. Dr. Kloeris did not believe that appellant's condition was chronic but would require continued follow-up treatment for at least six months. On January 26, 2006 he noted that appellant showed signs of depression, anxiety and anger on examination. Dr. Kloeris asserted that appellant's relationships at work had produced stress. He advised that appellant was unable to participate in stressful situations or engage in interpersonal relations.

Appellant submitted an excuse slip dated November 1, 2005 from Clear Lake Family Physicians for hip and anxiety conditions. A November 30, 2005 disability slip noted that he was unable to return to work as of November 30, 2005 but was cleared to return to work as of December 1, 2005.

Appellant also submitted a December 6, 2005 leave slip. The employer indicated that appellant was required to provide adequate documentation to support his claim that he missed work due to stress. In a Form CA-17 report dated December 7, 2005, Dr. Klein stated that appellant showed signs of depression and anger and placed him on restrictions. He advised that appellant had continuing emotional injury or trauma. In a January 26, 2006 disability slip, appellant was advised to avoid stressful situations and he was restricted from working overtime.

On November 5, 2008 appellant asserted that he was entitled to compensation because the October 4, 2006 EEO resolution agreement established that his mangers had abused him. In addition, his physician indicated that his stress-related condition was caused by employment factors.

In a March 12, 2009 decision, the Office denied appellant's application for review on the ground that it did not raise substantive legal questions or include new and relevant evidence sufficient to require the Office to reopen the claim for merit review.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[2] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[3]

ANALYSIS

In a February 13, 2006 decision, the Office denied appellant's claim as he failed to establish a compensable factor of employment. On November 17, 2006 an Office hearing representative affirmed the denial of his claim. Appellant seeks reconsideration but has not shown that the Office erroneously applied or interpreted a specific point of law. He has not advanced a relevant legal argument not previously considered by the Office. On appeal, appellant again asserted that he submitted a traumatic injury claim because that was the form management provided him following the December 6, 2005 incident. He stated that he subsequently submitted a timely occupational disease claim but did not receive a response. Appellant's claim, while ostensibly more conducive to one based on an occupational condition pursuant to a Form CA-2, was adjudicated by the Office and his contentions received due consideration. He noted at the August 31, 2006 hearing that he initially attributed his condition to a December 6, 2005 confrontation in his supervisor's office. This contention does not constitute "a relevant legal argument not previously considered by the Office" and is not sufficient, by itself, to show that "the Office erroneously applied or interpreted a specific point of law."

Appellant did not submit any new evidence in connection with his November 8, 2007 request, which addresses the underlying issue of whether he established a compensable factor of employment as a cause of his alleged emotional condition. The evidence submitted is not pertinent to this issue. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[4] The reports from Drs. Kloeris and Klein pertain to appellant's medical treatment and are not relevant to the issue of whether appellant has established a factor of employment as a cause of his alleged emotional condition. These reports advised that appellant had anxiety and depression and indicated generally that these conditions were related to factors of his employment. The leave slips from Clear Lake Family Clinic indicated only that he experienced work-related stress during November 2005, a period prior to the December 6, 2005 investigative interview which allegedly precipitated his emotional condition and disability. The December 6, 2005 and January 26, 2006 leave slips noted that management required documentation to support appellant's request for leave due to stress and noted that he was restricted from working

[2] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[3] *Howard A. Williams*, 45 ECAB 853 (1994).

[4] *See David J. McDonald*, 50 ECAB 185 (1998).

overtime. This evidence is not relevant as he has not established error or abuse in the actions attributed to management. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. While he asserted that the October 4, 2006 settlement agreement constitutes an admission by management that it had engaged in improper conduct, the Board notes that the mere fact that personnel actions are later modified or rescinded, does not in and of itself, establish error or abuse.[5] This argument and the settlement agreement were considered by the Office in previous decisions. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 6, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[5] *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).