

FACTUAL HISTORY

On January 16, 2007 appellant, then a 60-year-old letter carrier, filed an occupational disease claim for an emotional condition. He was first aware that his illness was caused or aggravated by factors of his federal employment on June 24, 1991. Appellant stopped working for the employing establishment on August 8, 1991. He submitted statements and medical evidence with his claim.

On January 30, 2007 the Office notified appellant that the evidence was insufficient to support entitlement to benefits and provided him the opportunity to submit additional evidence. Appellant was informed that the record appeared to support the claim was not timely filed within the three-year statutory limit and he was asked to provide a detailed explanation as to why the claim was filed more than three years after it allegedly occurred. He submitted evidence in support of his claim.

In a March 13, 2007 decision, the Office denied appellant's claim on the grounds that it was not timely filed. Appellant initially requested a hearing but subsequently withdrew the hearing request and pursued reconsideration.

In support of the reconsideration request, appellant submitted documents which included: court records from legal actions taken against the employing establishment; an April 29, 2007 Equal Employment Opportunity Commission (EEOC) decision; an April 12, 2001 EEOC decision; a memorandum of interview from the Postal Inspection Service dated March 26, 1986; various other exhibits; summaries of legal opinions; statements; congressional inquiries; and medical evidence.

In an August 9, 2007 decision, the Office denied modification of the March 13, 2007 decision.

On October 9, 2007 appellant requested reconsideration. He submitted documentation of a legal action against the employing establishment, legal opinions presented by his representative and medical reports concerning his condition.

By decision dated December 4, 2007, the Office denied modification of its August 9, 2007 decision. It found that the evidence of record did not establish that the claim was timely filed.

On January 22, 2008 appellant filed a request for reconsideration. In support of his request, he submitted additional evidence and argument.

By decision dated July 31, 2008, the Office modified its earlier decisions to find that the claim was timely filed. However, it denied the claim on the basis that appellant did not established that he sustained an injury in the performance of duty. Appellant attributed his emotional reaction to an employing establishment investigation of a missing mail pouch; his termination; lack of training; not receiving jobs or promotions; denial of advanced sick leave; the new postmaster's refusal to give his pay check to his wife; and being asked to deliver mail when he felt that he was impaired by medication. The Office found that, with regard to the investigation into the missing mail pouch, the employer acted reasonably in its administrative capacity and had not erred or committed abuse and its actions did not constitute harassment. It

further found that the other claimed administrative or personnel actions were not considered compensable factors of employment, as there was no evidence that the employing establishment had erred or committed abuse.

On June 30, 2009 appellant requested reconsideration. His representative submitted a 16-page letter arguing how the evidence supported that appellant's condition arose out of the performance of duty. She submitted documents from the Social Security Administration and Department of Veterans Affairs, congressional, correspondence and district court pleadings filed by the U.S. attorney's office. His representative also provided medical notes from Dr. H. Susan Kower, a Board-certified psychiatrist, Dr. Howard Richmond, a Board-certified psychiatrist, and Dr. David Petkash, a Board-certified psychiatrist. In an October 14, 2008 declaration Jane Eyre, manager, Records Office, documented her unsuccessful search for appellant's closed employee medical file and official personnel folder. Therefore, she could not respond to his Freedom of Information Act requests for certain documents.

By decision dated September 25, 2009, the Office denied appellant's request for reconsideration finding that as he did not raise any substantive legal questions or include any new and relevant evidence his request was insufficient to warrant a merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), 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.³ Section 10.608(b) of Office regulations provide 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.⁴

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁵ The Board has also held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

ANALYSIS

Appellant disagreed with the denial of his claim for an emotional condition and requested reconsideration on June 30, 2009. The underlying issue on reconsideration was whether he established that he sustained an emotional condition in the performance of duty. The Office found that the investigation into the missing mail pouch did not constitute a compensable factor

³ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141 (2007).

⁴ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495 (2008).

⁵ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

as the employing establishment had acted reasonably in its administrative capacity. Moreover, there was no evidence that the employer erred or committed abuse with regards to the other claimed administrative or personnel actions.

On June 30, 2009 appellant argued that the evidence supporting his condition arose within the performance of duty. His interpretation of the evidence, however, does 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. Additionally, the documents appellant submitted reiterated the same arguments previously considered and are cumulative with respect to the evidence of record. Appellant 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 submitted copies of documents previously submitted and medical reports. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁷ While the declaration of Ms. Eyre is new to the record, it is not relevant as it does not establish administrative error by the employing establishment regarding matters alleged by appellant in his emotional condition claim. The postal inspection notes from 1988 and 1989 and the employing establishment's admissions in federal court, while new to the record, do not contain any information to address allegations of administrative error by the employing establishment with regard to matters alleged by appellant in his claim. Additionally, the new medical evidence is not relevant to the understanding issue, as appellant did not establish a compensable employment factor.⁸ Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an emotional condition in the performance of duty.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy any of the three regulatory criteria for reopening a claim for merit review.

On appeal, appellant alleged that the Office abused its discretion in not issuing a merit decision on September 25, 2009. As noted above, the new evidence submitted on reconsideration is not relevant to the underlying issue in the claim; as it does not support that the employing establishment committed error or abuse with regard to any administrative or personnel matters. Appellant also argued that he was adversely affected by the failure of the Office or the Board to provide copies of Board decisions he requested. By then the 90 days in which appellant had to request an appeal of the Office's decision had lapsed and his only option was to request reconsideration.⁹ In support of his contention, he cited to *Granville O. Allen*.¹⁰ Appellant's situation, however, is distinguishable from that in *Allen*. In *Allen*, the claimant had inquired about evidence which was allegedly previously submitted, but which the Office did not

⁷ *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ Appellant noted that the Office's July 31, 2008 Appeal Request Form indicated that he had 90 calendar days from the date of the Office's decision to appeal to the Board. He stated that it appeared he actually had one year in which to file an appeal, but he was never informed that was the case.

¹⁰ Docket No. 98-735 (issued August 4, 2000).

have in its record when it issued its decision. In contrast, appellant requested copies of Board decisions that are in the public domain and not part of his case record or alleged to be of record. The Board has also recognized that, even if a claimant was incorrectly advised of appeal rights, this does not vest in that claimant a right that is prohibited by regulations.¹¹ These assertions have no color of validity.¹² Appellant timely requested reconsideration from the July 31, 2008 merit decision and had an opportunity to submit new evidence or argument.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ *Ralph W. Moody*, 44 ECAB 375 (1993).

¹² While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity. *L.G.*, 61 ECAB ____ (Docket No. 09-1517, issued March 3, 2010).