United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
	)	**Docket No. 10-901**
and	)	**Issued: November 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2010 appellant filed a timely appeal from an October 6, 2009 decision of the Office of Workers' Compensation Programs denying his request for reconsideration without a merit review. Because more than 180 days have elapsed between the most recent merit decision of the Office dated July 2, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case 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 May 7, 2009 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging duress on April 10, 2009 that triggered a "chemical imbalance in brain." He did not identify the nature of his claimed injury. Appellant stopped work on April 10, 2009 and did not return.

Submitted with the claim were a May 5, 2009 duty status report and a May 11, 2009 accident report. On May 5, 2009 Dr. Sudhir Lingnurkar, a psychiatrist, noted examining appellant on April 10, 2009. He diagnosed appellant as having a mood disorder and noted that appellant sustained a previous closed-head injury due to an automobile accident. Dr. Lingnurkar advised that appellant could not return to work. Appellant completed a portion of the report and described the injury and body part affected as "acute psychosis initiated by subject to stress/duress on the job (previous closed head injury)."

In the May 11, 2009 accident report, appellant's manager stated that appellant did not provide a statement or any documentation indicating that an accident occurred on April 10, 2009. The manager also maintained that she had no knowledge of any incident related to an accident occurring on April 10, 2009 or appellant being diagnosed with a closed-head injury at any time during his employment.

The employing establishment controverted appellant's claim in a May 15, 2009 letter, asserting that the evidence did not show that he actually experienced a work-related incident in the performance of duty that resulted in the claimed injury.

In a May 29, 2009 letter, the Office notified appellant that the evidence he submitted was insufficient to support his traumatic injury claim and advised him of the evidence he needed to establish his claim. It advised appellant that the evidence was not sufficient to establish that he experienced an employment incident or factor alleged to have caused an injury and asked him to respond to a questionnaire attached to the letter.

In a July 2, 2009 decision, the Office denied appellant's traumatic injury claim on the grounds that he failed to demonstrate that a specific event, incident, or exposure occurred at the time, place and in the manner alleged.

Appellant submitted a July 2, 2009 progress note from Dr. Lingnurkar, who noted that appellant was a former postal employee who became increasingly "disorganized and disturbed," unable to function and "very sad" due to "too many problems with his job." Dr. Lingnurkar advised that appellant feared his supervisor, who was "becoming more angry and irritable" and treated him unjustly. He obtained a history that appellant was in a motorbike accident in June 2006 resulting in a "questionable" closed head injury and leg and foot injuries. Dr. Lingnurkar diagnosed appellant as having major depressive affective disorder and severe psychosocial and environmental problems, rule out post-traumatic stress disorder and a mood disorder secondary to the motorbike accident. He recommended continuing appellant's medication as well as extending disability leave for at least another three months.

Appellant submitted a June 20, 2009 response to the Office's May 29, 2009 request for information. He stated that his blood pressure rose immediately after his injury and he reported directly to the hospital. Appellant answered "N/A" to the remaining questions relating to an automobile accident, witness statements, injury history, delay in seeking medical attention, home treatment and a description of his condition before seeing a physician.

In a July 13, 2009 appeal request form, appellant requested reconsideration. No evidence accompanied the form.

In an October 6, 2009 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial to the issue in the case and not sufficient to warrant further merit review.

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's regulations provide that the evidence or argument submitted by a claimant must either: (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.[2] Where the request for reconsideration is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[3]

ANALYSIS

The Office's July 2, 2009 merit decision denied appellant's claim, finding that he did not establish that the April 10, 2009 incident occurred at the time, place or in the manner alleged.[4] Appellant requested reconsideration on July 13, 2009 but did not submit any assertions or argument with his reconsideration request. His request did not identify a specific point of law that was erroneously applied or interpreted, and it did not advance a relevant legal argument not previously considered.

Appellant submitted additional evidence on reconsideration. In a June 20, 2009 response to the Office's May 29, 2009 information request, appellant did not provide any description of an April 10, 2009 employment incident to which he attributed his claimed sustained condition. He mentioned that heightened blood pressure was an immediate effect of his injury and that he reported directly to the hospital thereafter; but he did not further address any incident occurring on April 10, 2009 that gave rise to his claimed injury. 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] Although this is new evidence not previously considered by the Office, it is not relevant because it did not address the issue upon which the Office based its denial of the claim.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

[3] *L.D.*, 59 ECAB 648 (2008).

[4] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. Fact of injury consists of two components. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury. *See John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[5] *D.K.*, 59 ECAB 141 (2007).

Dr. Lingnurkar's July 2, 2009 progress note diagnosed affective disorder and attributed the condition to work-related problems, particularly appellant's fear of his supervisor and unjust treatment. He, however, did not provide any history of an April 10, 2009 incident, as alleged; rather he noted the general allegation of unjust treatment. The underlying issue involves whether appellant has established the occurrence of the April 10, 2009 employment incident to which he attributes his claimed injury. Dr. Lingnurkar's progress note is not relevant because he did not address any such incident. As noted, the submission of evidence, which does not address the particular issue involved, does not constitute a basis for reopening a case.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered. He, therefore, is not entitled to a review of the merits of his claim.

Appellant argues on appeal that he was hospitalized immediately after his injury, he was not predisposed to illness and that his physician felt that he needed to be hospitalized and treated while he was unable to work. The Board only has jurisdiction to consider whether the October 6, 2009 Office decision properly denied further merit review of his claim. As explained, appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 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