

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

Z.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Compton, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-835
Issued: December 1, 2011**

Appearances:
Greg Dixon, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant, through his representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) August 31, 2010 nonmerit decision denying his request for reconsideration. As the last merit decision was issued on August 24, 2009, the Board lacks jurisdiction to review the merits of this case.¹ Pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹ For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e)."

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 23, 2008 appellant, a 57-year-old letter carrier filed an occupational disease claim alleging that he developed employment-related stress as a result of his employer's abusive treatment. He alleged that he was forced to eat his lunch on a stool by a mailbox in an unsafe location, where he was exposed to the elements; that he was often not allowed to use the employing establishment's restroom, but was given a special bottle so he would not have to urinate frequently; that he was the subject of numerous disciplinary actions, the majority of which were rescinded; that the vehicle he was required to drive was unsafe; that he was told to go home on December 11, 2007, although he was not finished with his work; and that, although his manager refused to allow him to attend safety meetings, he was required to affirm that he had attended them. Appellant alleged that his supervisor threatened to have him arrested if he reported abuse to his union representative.

By decision dated February 10, 2009, OWCP denied appellant's claim, finding that he had failed to establish a compensable factor of employment. Appellant made a timely request for an oral hearing.

Appellant submitted numerous Carrier-Auxiliary Control forms requesting assistance completing his work; documents charging appellant with use of more work hours than had been authorized by management; a notice of a 14-day suspension dated June 1, 2009 and a reduction of the suspension to 7 days dated June 4, 2009; forms requesting leave for 6 days between April 24 and August 6, 2009. all of which were disapproved; and copies of grievances for incidents which reportedly occurred on March 26 to 29, August 29 and November 13, 2008, April 16, May 8, June 1, 9, 10, 12 and July 1, 2009, some of which were settled. He submitted memorandums to supervisors and union stewards from April 14 through July 1, 2009 regarding requests to have a vehicle to deliver his route, the right to use the restroom and break room, the instruction to use a stool to take his lunch outside, suspensions Post Master Tyrone Williams had imposed, being recorded on camera on June 9, 2009 and being made to use sick leave. In an April 30, 2009 witness statement, a Lionel Felix confirmed that an "LLV" had a back gate which could easily be opened without keys and that appellant had reported this on May 16, 2008, but it had not yet been fixed. Appellant also submitted notes, reports and disability slips supporting his claimed stress condition.

By decision dated August 24, 2009, an OWCP hearing representative affirmed the February 10, 2009 decision, finding that appellant had not established a compensable factor of employment.

On August 19, 2010 appellant, through his representative, submitted a request for reconsideration. Counsel argued that the hearing representative had not given adequate weight to the incidents which had occurred subsequent to OWCP's February 10, 2009 decision.

In support of his reconsideration request, appellant submitted copies of the following previously-submitted documents: "Day in Court" notices dated May 20 and 26 and June 1, 2009; copies of previously submitted letters and statements from appellant dated April 16, 18, 25, 27 and 30, May 6, 7, 8, 20, 22, 23, 28 and 30, June 7, 12, 16, 19 and 23 and July 16, 2009; April 27, 2009 statement from Sharon Whitaker; grievance settlement dated May 20, 2009;

investigative interview notes dated May 20, 2009; and a May 15, 2009 precomplaint counseling document. Appellant also submitted treating physician's notes and reports for the period May 4, 2009 to June 17, 2010; "Day in Court" notices dated April 20, 25 and 29 and May 6, 2009; a June 5, 2009 statement from a William King confirming that appellant was sent home on May 30, 2009; a May 20, 2009 statement from a William Kinle regarding his own work schedule; a July 14, 2009 inquiry from appellant regarding the status of his case; PS3996 forms dated April 14 and 21, 2009; June 30, 2009 Equal Employment Opportunity (EEO) Commission notification; letters from appellant dated May 26, June 2 and 11, 2009 regarding a suspension; 14-day suspension documents dated May 24, June 1 and 4, 2009; a June 26, 2009 notice of right to file an EEO complaint; leave of absence requests; a June 15, 2009 report of hazard; appellant's May 29, 2009 request for investigation into his pay; and the first page of a July 14, 2009 notice of occupational disease.

By decision dated August 31, 2010, OWCP denied appellant's reconsideration request on the grounds that the evidence submitted did not warrant merit review.

On appeal, appellant's representative argues that appellant submitted a timely request for reconsideration and new evidence not previously addressed by OWCP.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶ 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.⁷

ANALYSIS

As noted above, the Board does not have jurisdiction over the August 24, 2009 hearing representative's decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his August 19, 2010 application for reconsideration, appellant did not

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted; nor did he advance a new and relevant legal argument. Rather, appellant merely argued generally that the hearing representative had not given adequate weight to the incidents which had occurred subsequent to OWCP's February 10, 2009 decision.

The Board also finds that appellant did not submit new and relevant evidence warranting merit review. Many of the numerous documents provided were copies of documents previously received and reviewed by OWCP. They are therefore cumulative and duplicative in nature and insufficient to warrant merit review.⁸ Letters from appellant reiterating his claims of harassment, forms and notices relating to his EEO complaint, disciplinary letters documenting previously described events, and witness statements confirming evidence already of record are cumulative in nature and do not constitute relevant and pertinent new evidence not previously considered by OWCP.⁹ The medical evidence submitted is irrelevant to the issue that was before the hearing representative, namely, whether he established a compensable factor of employment. Further, appellant has not alleged or shown how the remaining evidence submitted, including requests for leave of absence and investigation into his pay, reports of hazard and the first page of an occupational disease claim, could be relevant to the issue in this case. Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

On appeal, appellant's representative argues that appellant submitted a timely request for reconsideration and new evidence not previously addressed by OWCP. As noted, appellant failed to submit new evidence that was relevant to the issue at hand. Therefore, he failed to meet his burden of proof.

The Board finds that OWCP 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 August 19, 2010 request for reconsideration.

CONCLUSION

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

⁸ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

⁹ See *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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