United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 14-286**
	)	**Issued: May 5, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Greenville, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 15, 2013 appellant filed a timely appeal of a May 21, 2013 decision of the Office of Workers' Compensation Programs (OWCP), denying his application for reconsideration.[1] Since more than 180 days elapsed from the last merit decision of February 25, 2013 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly denied appellant's application for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

[1] A notice of appeal must be filed within 180 days of OWCP's final decision. 20 C.F.R. § 501.3(e). The date of filing is the date of receipt by the Board, but if the date of receipt (in this case November 20, 2013) would result in a loss of appeal rights, the postmark date will be used. 20 C.F.R. § 501.3(f). The appeal was postmarked November 15, 2013 and is timely with respect to the May 21, 2013 OWCP decision.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 30, 2012 appellant submitted an occupational disease claim (Form CA-2) alleging that he sustained anxiety and stress "after being notified I would have to return" to the Greenville, MI work location in an August 17, 2012 telephone call. In an August 23, 2012 statement, he noted that he had successfully bid on a position in April 2012, but he requested to withdraw his bid because he felt there were medical issues that would prevent his performance of the bid position. Appellant stated that in July 2012 he failed the test for the job, and he knew then that the employing establishment "must begin to fire me, even though I do the job from the beginning, I felt like they had dropped all the safeguards, sending me there to fail their test." According to appellant, the employing establishment had agreed to a temporary detail in Saginaw, MI, but on August 17, 2012 management advised him that, if he did not withdraw an appeal to the Merit Systems Protection Board (MSPB), they would send him back to Greenville on "340 time" as punishment until he was fired.[3] On August 23, 2012 he received notice that his employment was terminated.

The employing establishment submitted an undated statement from appellant's supervisor, who noted that no medical documentation was submitted regarding appellant's claim. In a letter dated August 30, 2012, the employing establishment controverted the claim noting that appellant received a proposed separation and letter of decision effective September 10, 2012.

In a letter dated September 6, 2012, OWCP advised appellant that he needed to submit additional factual and medical evidence to establish his claim. On October 5, 2012 he submitted medical evidence. In a September 17, 2012 statement, appellant described the bid position in Greenville and stated that he became aware that he would be unable to perform the core duties. On April 24, 2012 he requested withdrawal of the bid position and submitted a medical report. The employing establishment directed him to transfer to the Greenville facility on June 30, 2012 and the duties were to sit in the basement. Appellant was issued a notice of removal on July 31, 2012 for failing the bulk mail test. On August 10, 2012 an agreement was reached where he would withdraw any Equal Employment Opportunity, MSPB or similar appeals and be provided temporary work in the Saginaw facility. On August 17, 2012 appellant called the MSPB and there was a teleconference with the employing establishment's attorney, who stated that appellant would be forced back to Greenville to sit until employment was terminated.

By decision dated February 25, 2013, OWCP denied the claim for compensation. It found that appellant did not establish a compensable work factor.

On March 22, 2013 appellant requested reconsideration of the claim. He stated that the information provided by the employing establishment was accepted without input. Appellant stated that he intended to file a complaint regarding the employing establishment's statements as to personal medical information. He contended that he was denied an opportunity to respond to the controversion by the employing establishment and OWCP failed to assist him in his claim. Appellant reiterated that he was punished for failing to withdraw his MSPB appeal. He submitted medical reports dated June 20 and July 23, 2012 and a copy of a notice of eligibility under the Family Medical Leave Act.

[3] Appellant indicated that "340 time" was a code for stand by employment.

In an August 10, 2012 memorandum, the Saginaw postmaster noted that appellant had requested a temporary assignment near his home until August 26, 2012. The postmaster advised that he was willing to offer a temporary schedule to accommodate the request.

By decision dated May 21, 2013, OWCP determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim. It found that he did not meet the requirements for a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[4] OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."[5] 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.[6]

The Board does not have jurisdiction over the merits of appellants' claim.

ANALYSIS

Appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2) to require OWCP to reopen his case for review of the merits. His March 22, 2013 application for reconsideration does not establish that OWCP erroneously applied or interpreted a specific point of law. Appellant did not discuss a specific point of law with respect to his claim for an emotional condition or otherwise show that OWCP erroneously applied or interpreted the law.

With respect to advancing a new and relevant legal argument, appellant did not meet this requirement. He alleged generally that OWCP relied on information from the employing establishment and he did not have an opportunity to respond. The Board notes, however, that appellant had an opportunity to submit relevant evidence regarding his claim prior to February 25, 2013. Appellant was advised of the necessity to submit factual evidence in a September 6, 2012 letter. His application for reconsideration does not provide a relevant legal argument not previously considered.

Appellant did submit additional medical evidence with his request for reconsideration. Until a compensable work factor is established, the medical evidence is not relevant since the medical issue is whether a diagnosed condition is causally related to a compensable work factor.[7]

[4] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[5] 20 C.F.R. § 10.606(b)(2).

[6] *Id*. at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

[7] *See James W. Scott*, 55 ECAB 606 (2004).

The claim in this case was denied because appellant did not establish a compensable work factor. The allegations appellant raised related to administrative or personnel matters, such as being required to return to the Greenville facility, would be compensable if error or abuse was established.[8] He did not submit new and relevant evidence on the issue of a compensable work factor. The August 10, 2012 memorandum from the Saginaw postmaster confirmed that a temporary position was offered, but this was not in dispute. Appellant alleged that there was an agreement that he could work at the Saginaw facility. The evidence from the postmaster was not new and relevant evidence on the issue of establishing a compensable work factor in this case.

The Board finds that OWCP properly declined to reopen the case for further review of the merits. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), appellant is not entitled to a merit review.

CONCLUSION

The Board finds OWCP properly found appellant's application for reconsideration was not sufficient to warrant a review of the merits of the claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2013 is affirmed.

Issued: May 5, 2014
Washington, DC

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

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

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

[8] *See e.g., Peter D. Butt, Jr.*, 56 ECAB 117 (2004).