

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

J.S., Appellant)

and)

GENERAL SERVICES ADMINISTRATION,)
FEDERAL PROTECTIVE SERVICES,)
CRIMINAL INVESTIGATION SECTION,)
San Francisco, CA, Employer)

**Docket No. 06-1615
Issued: February 5, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 12, 2006 which denied his request for merit review. Because more than one year has elapsed between the last merit decision dated January 7, 2005 and the filing of this appeal on July 10, 2006, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On April 9, 2003 appellant, then a 48-year-old special agent, filed an occupational disease claim alleging that on February 14, 2003 he realized that he had developed

gastroesophageal reflux disease. He first attributed this condition to his employment on March 12, 2003. In support of appellant's claim, he submitted a detailed statement addressing the employment factors that he felt caused or contributed to his reflux disease as well as to his previously filed claims for adjustment disorder.¹ He attributed his condition to stress from the employing establishment's retaliation following his whistle-blowing activities including a notice of proposed removal. Appellant stated:

"In brief, the above employment conditions clearly resulted in the previously diagnosed ongoing [a]djustment [d]isorder (with [m]ixed [d]epression and [a]nxiety)... The accompanying related [g]astrointestinal [p]roblems (which occurred over a long period of time) this later contributed to the recently diagnosed [g]astroesophageal [r]eflux [d]isease (w/erosion, scarring and formation of a [s]tricture in my esophagus). The nexus between the two illnesses will be more clearly defined once the medical and nonmedical evidence has been reviewed."

The Office denied appellant's claim by decision dated November 21, 2003 finding that he had not submitted sufficient factual and medical evidence to meet his burden of proof. The Office noted that as appellant's claims for adjustment disorder had not been accepted as causally related to the alleged factors of employment, his assertion that he developed gastroesophageal reflux disease as a consequence of gastrointestinal problems which accompanied his adjustment disorder could not be considered employment related.

Appellant requested reconsideration of the November 21, 2003 merit decision on November 20, 2004. In support of his claim, he submitted extensive documentation regarding the factors of employment which he felt caused or contributed to his adjustment disorder and gastroesophageal reflux disease. By decision dated January 7, 2005, the Office reviewed appellant's claim on the merits and noted that he had substantiated an additional employment event, a notice of proposed removal which was eventually rescinded by the employing establishment. However, the Office found that this employment event was not a compensable factor of employment as he had not established error or abuse on the part of the employing establishment. The Office concluded that appellant had not substantiated any further compensable employment factors to which he attributed his gastroesophageal reflux disease and to which he had previously attributed his emotional condition of adjustment disorder. The Office also noted that as appellant's previously filed emotional condition claims had not been established, he could not establish that he had developed gastroesophageal reflux disease as a consequence of his diagnosed condition of adjustment disorder. The Office denied his claim for gastroesophageal reflux disease.

¹ Appellant filed claims for adjustment disorder with the Office on November 4, 1998 (13-1175995), August 23, 2000 (13-2010525) and May 2, 2001 (13-2030065). These claims have not been accepted by the Office. The Board reviewed the August 23, 2000 claim on July 6, 2004 and affirmed a September 19, 2003 Office decision which declined to reopen appellant's claim for consideration of the merits. *James W. Scott*, 55 ECAB 606 (2004). In a decision dated June 25, 2001, the Board adopted and affirmed the hearing representative's June 15, 2000 denial of appellant's October 29, 1998 emotional condition claim. *James W. Scott*, Docket No. 00-2784 (issued June 25, 2001).

Appellant requested reconsideration of the January 7, 2005 merit decision on January 6, 2006. He did not submit any additional evidence in support of his reconsideration claim, but instead provided his narrative review of each of the employment events to which he attributed his stress and resultant adjustment disorder and gastroesophageal reflux disease. Appellant described what he believed to be his whistle-blowing activities, the resulting workplace retaliation and the filing of his emotional condition claims. He also provided extensive discussion of the denial of the notices of proposed removal as compensable employment factors. Appellant reviewed the evidence, medical and narrative he had initially submitted in support of his claim for reflux disease. He noted that he had not been contacted by the Office following the filing of his claim prior to the November 21, 2003 decision. Finally, appellant again argued that as he felt his claim for adjustment disorder should be accepted as compensable, the consequential reflux disease should also be accepted.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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 When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁴

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specify that the evidence be relevant and pertinent and not previously considered by the Office.⁵

ANALYSIS

In an attempt to require the Office to reopen appellant claim for consideration of the merits, he submitted a detailed narrative statement addressing the factors of employment to which he attributed both his diagnosed conditions, adjustment disorder and gastroesophageal reflux disorder. His statement did not contain any relevant new evidence. Therefore, appellant did not meet the third standard for requiring the Office to reopen his claim for consideration of the merits.

² 5 U.S.C. §§ 8101-8193, § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.608(b).

⁵ *Donald T. Pippin*, 54 ECAB 631 (2003).

Appellant's narrative statement consisted of arguments regarding the compensability of work events previously considered by the Office in this claim for a physical condition as well as in his multiple claims for an emotional condition. In regard to these arguments, he did not submit or reference any citation to Board authority or other supportive documentation to establish that the Office erroneously applied or interpreted a specific point of law with regard to whether the alleged employment factors were compensable. Appellant has therefore failed to meet the first standard requiring the Office to reopen his claim for consideration of the merits as he failed to show that the Office erroneously applied or interpreted a specific point of law with regard to the denial of compensability of employment factors.

Appellant has attributed his gastroesophageal reflux disease to two legal constructs. He initially claimed that he developed gastroesophageal reflux disease as a consequence of his diagnosed emotional condition of adjustment disorder. As noted by the Office, neither the Office nor the Board has accepted that appellant developed adjustment disorder due to compensable factors of his employment. It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment.⁶ However, as appellant has not established that the primary injury, adjustment disorder, arose in the course of his employment, the gastroesophageal reflux disease, even if established as a natural consequence of his diagnosed adjustment disorder, cannot be established as arising out of his employment. Therefore, his arguments as related to gastroesophageal reflux disease as a consequence of his adjustment disorder lack a reasonable color of validity and are not sufficient to require the Office to reopen his claim for consideration of the merits.

Appellant alleged that the Office improperly developed his claim for gastroesophageal reflux disease as the Office failed to provide him with notice of the additional evidence needed to meet his burden of proof in establishing that he developed gastroesophageal reflux disease as a result of his employment.⁷ This is not a new argument as appellant also addressed this issue in his November 20, 2004 request for reconsideration. Furthermore, as noted above, in appellant's initial claim form and supportive statements, it appeared that appellant was attributing his development of reflux disease as a consequence of his emotional condition claims. Since there is no basis for establishing a consequential injury until the underlying condition has been accepted as employment related, there was no evidence that appellant could submit under this claim, that would establish a relationship between his reflux and his employment until he had established his adjustment disorder as employment related through submission of evidence or argument in his prior claims. Even if the Office should have understood that appellant was alleging in the alternative that his reflux disease was a physical condition resulting from the same employment factors which contributed to his emotional condition rather than a direct consequential injury,

⁶ *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers' Compensation* § 10.01(2000).

⁷ 20 C.F.R. § 10.121. This regulation states, "If the claimant submits factual evidence, medical evidence or both, but [the Office] determines that this evidence is not sufficient to meet the burden of proof, [the Office] will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required. [The Office] is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof."

this is a procedural matter which was later cured by the receipt of the decisions on the merits on November 21, 2003 and January 7, 2005 as well as the submission of extensive documents by appellant in support of his November 20, 2004 request for reconsideration. This argument is not new and relevant nor is it a demonstration that the Office erroneously applied or interpreted a specific point of law.

CONCLUSION

The Board finds that appellant failed to submit the necessary relevant new evidence or legal argument or to show that the Office erroneously applied or interpreted a specific point of law. Therefore, the Office properly declined to reopen appellant's claim for consideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT April 12, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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