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RITA C. BAKER, Appellant	)	
	)	
and	)	Docket No. 05-885
	)	Issued: July 5, 2005
U.S. POSTAL SERVICE, POST OFFICE,	)	
Capitol Heights, MD, Employer	)	
	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

On March 4, 2005 appellant filed a timely appeal of a December 1, 2004 decision of the Office of Workers' Compensation Programs, denying merit review of a November 13, 2003 merit decision. Pursuant to 20 C.F.R. § 501.3(d)(2), the Board's jurisdiction is limited to final decisions issued within one year of the filing of the appeal. Therefore the only decision over which the Board has jurisdiction on this appeal is the December 1, 2004 decision.

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

On September 8, 2003 appellant, then a 48-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she sustained emotional stress, anxiety and a resulting increase in hypertension causally related to her federal employment. She reported on the claim form that a stressful relationship with her supervisor caused anxiety, depression and stress. By

letter dated October 6, 2003, the Office requested that appellant submit additional factual and medical evidence. Appellant submitted a November 4, 2003 statement alleging harassment and difficult relationships with supervisors.

By decision dated November 13, 2003, the Office denied the claim. The Office found that the evidence did not establish that the events occurred as alleged and there was no medical evidence establishing causal relationship between a diagnosed condition and the claimed events.

In a letter dated September 20, 2004, appellant requested reconsideration. She submitted a February 3, 2004 report from Dr. Frances Welsing, a psychiatrist, diagnosing acute stress disorder. Dr. Welsing stated that the diagnosis was secondary to harassment issues at the employing establishment and the acute symptoms had resolved with appellant able to return to full-time work.

By decision dated December 1, 2004, the Office denied merit review of the claim, finding that the evidence submitted was insufficient to warrant a 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 provides 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 [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."² Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

On reconsideration appellant submitted a February 3, 2004 report from Dr. Welsing. The underlying claim in this case, however, was based on alleged harassment and incidents involving appellant's supervisors. In a claim for an emotional condition, the medical evidence is not considered until a compensable work factor has been alleged and substantiated by the evidence of record.⁴ The Office did not accept a compensable work factor with respect to harassment or any other allegation. The brief medical report from Dr. Welsing dated February 3, 2004 is not

¹ 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").

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁴ *See Lori A. Facey*, 55 ECAB __ (Docket No. 03-2015, issued January 6, 2004); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992). Before a claim of harassment can be found to be a compensable work factor, the claimant must substantiate the allegation with probative and reliable evidence. *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

relevant and pertinent evidence regarding the initial factual issue in an emotional condition claim.⁵ It is therefore not sufficient to require the Office to reopen the case for review of the merits of the claim.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit new and relevant evidence. Since appellant did not meet any of the requirements of section 10.606(b)(2) in this case, the Office properly denied the request for reconsideration without merit review of the claim.

CONCLUSION

The Board finds that appellant did not submit new and relevant evidence, or meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly denied merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2004 is affirmed.

Issued: July 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁵ See *James W. Scott*, 55 ECAB __ (Docket No. 04-498, issued July 6, 2004) (medical evidence submitted on reconsideration not relevant to the failure to establish a compensable work factor).