

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

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**N.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 08-617  
Issued: August 18, 2008**

*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 December 26, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 17, 2007 nonmerit decision, denying her request for merit review of her claim. Because more than one year has elapsed between the June 14, 2006 merit decision of the Office and the filing of this appeal on December 26, 2007, the Board lacks jurisdiction to review the merits of this claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

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

**FACTUAL HISTORY**

On January 12, 2002 appellant, then a 42-year-old computer forwarding system (CFS) clerk, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty due to harassment, verbal abuse and unfair treatment.

In a December 17, 2002 decision, the Office denied her claim for an emotional condition. It found that the evidence of record failed to support that appellant sustained an emotional condition in the performance of duty.

On January 10, 2003 appellant requested a hearing, which was held on August 6, 2003. During the hearing, appellant described those factors of her employment which she believed contributed to her condition. She filed several grievances related to the actions of her supervisors and attempted to file an Equal Employment Opportunity claim, but was told that she did not qualify under the guidelines.

By decision dated December 18, 2003, the Office hearing representative affirmed the December 17, 2002 decision.

By letter dated December 17, 2004, appellant requested reconsideration. She alleged that she did not receive fair review, that not all of the evidence was in the file and that the medical evidence was ignored. By decision dated March 11, 2005, the Office denied modification of its previous decision. By letter dated March 13, 2006, appellant requested reconsideration. She contended that the claims examiner who issued the most recent decision had previously been involved in another claim she filed and should have removed herself from the claim.

By decision dated June 14, 2006, the Office denied modification of the March 11, 2005 decision.

On June 14, 2007 appellant requested reconsideration. She contended that a second claims examiner previously involved in another claim should have recused himself. Appellant repeated her arguments that the evidence in her case had been ignored. She also alleged that the claims examiner referred to evidence that was not provided by her and noted a June 28, 2005 report for which she was treated for a finger contusion. Appellant repeated her arguments that she had filed grievances against her supervisors, which were eventually reversed, and questioned whether this evidence was noted by the Office. She also submitted several requests for notification of absence forms dated December 13, 2002 and January 11, 2003.

The Office also received copies of previously submitted documents which included nursing notes from December 2002, reports dated September 12, 2002 from a psychiatrist whose signature is illegible, reports dated December 2, 12 and 13, 2002 from Dr. Karthik Linganathan, Board-certified in internal medicine, and several medical clearance forms.

By decision dated September 17, 2007, the Office denied appellant's request for reconsideration without a review of the merits, finding that her request was insufficient to warrant further merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section

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<sup>1</sup> 5 U.S.C. § 8128(a).

10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that “(i) [s]hows that [the Office] erroneously applied or interpreted a specific point of law; or (ii) [a]dvances a relevant legal argument not previously considered by [the Office]; or “(iii) [c]onstitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>2</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>3</sup>

### ANALYSIS

Appellant disagreed with the Office’s June 14, 2006 decision, which denied modification of prior decisions denying her emotional condition claim. The underlying issue is whether appellant established a compensable factor of employment with regard to her claim that she sustained an emotional condition in the performance of duty. However, appellant did not provide any relevant or pertinent new evidence pertaining to this issue.

In a June 14, 2007 request for reconsideration, appellant essentially reiterated her previous arguments. As noted, she alleged that Office claims examiners had previously been involved in another claim, that evidence in her case had been ignored and that she had filed grievances against her supervisor which were reversed. These allegations were previously made by appellant and considered by the Office. Appellant also submitted documents that were previously of record. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>4</sup> Appellant did not provide any relevant and pertinent new evidence to establish that she sustained an emotional condition in the performance of duty.

Appellant also asserted that the claims examiner referred to evidence that was not provided by her. The Board notes that the evidence referenced by appellant, regarding a finger contusion, is clearly in the record. Furthermore, the Board notes that the evidence pertaining to a finger contusion is not relevant to her claim for an emotional condition. Additionally, appellant’s submission of requests for notification of absence forms is not relevant to establishing a compensable factor of employment. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>5</sup>

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<sup>2</sup> 20 C.F.R. § 10.606(b).

<sup>3</sup> 20 C.F.R. § 10.608(b).

<sup>4</sup> *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

<sup>5</sup> *See Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

The evidence submitted by appellant on reconsideration does not satisfy the third criterion for reopening a claim for merit review. Furthermore, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied her request for reconsideration.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2008  
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