



on Tour 3, indicated on the claim form that appellant was working within her restrictions from a previous employment-related injury and had recently begun to work six-hour days.<sup>2</sup>

In an attached statement, appellant noted that she worked in the Registry Room but at 11:00 p.m., near the end of her shift, she would be locked out, when she was displaced by Tour 1 employees. She stated that for awhile she took a second key so that she could reenter the Registry Room, but that this was taken away from her. She alleged that work assigned to her at the end of her tour outside the Registry Room was beyond her physical restrictions and that she was told not to keep personal items in “lock” drawers but that others did. She alleged that employing establishment management discriminated against minorities and that she had filed a grievance about her concerns. She also stated that she had filed a petition and wanted to continue working in the Registry Room until her tour ended. She contended that management was retaliating against her because she was a vocal, black female.

Appellant submitted disability slips and treatment notes dated October 7 and November 21, 2002, signed by Pandora Williams, a physician’s assistant, who diagnosed work-related situation anxiety and depression and advised that appellant should only work 4:00 to 10:00 p.m. for approximately six weeks “due to excessive job-related stress.” On January 7, 2003 Ms. Williams advised that appellant could work eight hours per day.

In a letter dated December 24, 2002, the Office requested that the employing establishment provide a response regarding appellant’s allegations. By letter dated February 11, 2003, the employing establishment controverted the claim and countered each of appellant’s allegations. The employing establishment submitted statements dated January 6, 2003 in which Mr. Lauterio and John Hogg, MDO Tour 1, explained the Registry Room personnel policy regarding scheduling, lockers and security.

Appellant thereafter submitted treatment notes dated July 11 and 18, 2002 and January 28 and March 31, 2003 which were signed by either Ms. Williams or Molly Wheelwright, also a physician’s assistant, but were initialed by Dr. Edward Beggy, a Board-certified family practitioner. Diagnoses of stress and back pain were noted.

By decision dated May 23, 2003, the Office denied the claim. The Office found that, while several incidents described by appellant occurred in the course of employment, these were not compensable as they were administrative in nature. The Office concluded that appellant’s emotional condition did not arise in the performance of duty.

In an undated request form that was stamped received by the Office on April 16, 2004, appellant requested reconsideration. She submitted time sheets and earnings and leave statements, and a treatment note dated November 8, 2002 in which a social worker, whose signature is illegible, advised that appellant felt harassed due to stressors related to work. In a decision dated April 22, 2004, the Office denied appellant’s reconsideration request.

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<sup>2</sup> The record indicates that appellant was working in a rehabilitation position for carpal tunnel syndrome. She worked Tour 3, or from 4:00 p.m. to 12:30 a.m.

## LEGAL PRECEDENT

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

## ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated April 22, 2004 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated May 23, 2003 and the filing of her appeal with the Board on August 2, 2004, the Board lacks jurisdiction to review the merits of her claim.<sup>6</sup>

In requesting reconsideration, appellant merely checked an Office form indicating that she was requesting reconsideration and did not present a statement regarding the grounds upon which reconsideration was being requested. Appellant therefore did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.<sup>7</sup>

With her reconsideration request, appellant submitted time sheets and earnings and leave statements regarding periods in January and February 2002. She also submitted a treatment note dated November 8, 2002 from a social worker. The Board finds this evidence not relevant regarding the issue of whether appellant sustained an injury in the performance of duty. The time sheets merely document appellant's time at work and, as appellant failed to establish a compensable factor of employment, the submission of medical evidence is irrelevant and need

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<sup>3</sup> 20 C.F.R. § 10.608(a).

<sup>4</sup> 20 C.F.R. § 10.608(b)(1) and (2).

<sup>5</sup> 20 C.F.R. § 10.608(b).

<sup>6</sup> 20 C.F.R. § 501.3(d)(2).

<sup>7</sup> *Supra* note 4.

not be addressed.<sup>8</sup> Appellant therefore failed to submit relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> The Office properly determined that appellant's request did not constitute a basis for reopening the case for further merit review.

**CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's claim for merit review on April 22, 2004.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 22, 2004 be affirmed.

Issued: December 23, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *Roger Williams*, 52 ECAB 468 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992). The Board further notes that the opinions of a physician's assistant are not considered medical evidence as a physician's assistant is not considered a physician under the Federal Employees' Compensation Act. *Ricky S. Storms*, 52 ECAB 349 (2001). Likewise, reports from a social worker are not deemed medical reports under the Act. *Frederick C. Smith*, 48 ECAB 132 (1996).

<sup>9</sup> *Supra* note 4.