

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

SHAKUNTALA K. RATWANI, Appellant)	
)	
and)	Docket No. 04-148
)	Issued: March 4, 2004
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Baltimore, MD, Employer)	
)	

Appearances:
Scott B. Baron, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 25, 2003 in which the Office denied appellant's request for reconsideration. Because more than one year has elapsed between the last merit decision dated March 27, 2002 and the filing of the appeal on October 17, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 12, 2000 appellant, then a 54-year-old doctor, filed an occupational claim for emotional stress commencing on June 6, 1996, alleging that she was subject to harassment by a

former supervisor, Dr. Peter Gorman, and top management. Appellant had filed a prior stress claim, No. A25-529785, which the Office accepted for temporary adjustment reaction. Appellant missed work due to that claim from November 5, 1998 through July 26, 1999. Appellant stated that, when she resumed work on July 27, 1999, she was assigned to do outpatient work in Managed Care at the Baltimore office pending renewal of her clinical privileges. On October 20, 1999 appellant's clinical privileges were approved and on January 12, 2000 appellant was assigned a five-month detail to work as a psychiatrist for Dr. Mark Heuser at the Perry Point Facility where she would provide medical care to inpatients and outpatients. By letter dated January 26, 2000, appellant refused the assignment stating that she could not handle inpatient care with her emotional condition and being a nervous driver, she was concerned about the 75-mile trip from her home to the office. Appellant also complained that she had to share an office with as many as three other employees which she perceived as a punitive action.

By letter dated September 7, 2000, appellant stated that she was on medical leave per her doctor's advice since January 30, 2000. Appellant also stated that her advanced sick leave was denied. She believed management was continuing to harass her as reflected in letters regarding her assignment change from the Chief of Staff, Dr. Mohamed Al-Ibrahim, Dr. Heuser, and her former supervisor, Dr. Sandra Marshall.

By decision dated March 29, 2001, the Office denied appellant's claim, stating that she had not established any compensable factors of employment and did not meet the requirements for establishing that she sustained an injury in the performance of duty.

By letter dated April 16, 2001, appellant requested an oral hearing before an Office hearing representative which was held on January 17, 2002. At the hearing, appellant reiterated that she did not feel capable of performing inpatient care. She stated that the change in assignment caused her to become depressed and to have anxiety attacks and nightmares because she felt the assignment would involve working in the same hostile surroundings which triggered her last emotional condition. She stated that she filed a new claim rather than a recurrence of disability based on advice from the Office.

By decision dated March 27, 2002, the Office hearing representative affirmed the Office's March 29, 2001 decision.

By letter dated July 11, 2003, appellant requested reconsideration of the Office's decision and submitted a medical report dated April 17, 2003 from her treating physician, Dr. Sally A. Waddington, a Board-certified neurologist with a specialty in psychiatry, and a letter dated June 4, 2003 addressed to the Board. In her April 17, 2003 report, Dr. Waddington described appellant's history of injury, and concluded that appellant's adjustment disorder had evolved into a major depressive episode, and that appellant's depression had been present and not in remission upon her return to work in 2000. She noted appellant's unhappiness with the new job assignment which involved performing inpatient work and commuting 75 miles, and that appellant believed the assignment was in retaliation for an Equal Employment Opportunity complaint.

In her June 4, 2003 letter, appellant explained that when she had been assigned to the psychiatry department in 1991 she was not hired to work in the inpatient rehabilitation unit. She also stated that she had not completely recovered from her prior emotional condition, and felt that her agency misguided her into filing a new claim. Appellant stated that she felt the harassment she had previously endured was causing her current anxiety. She described the nature of her emotional condition and her medical treatment.

Appellant submitted a letter to the Office dated March 20, 2003 appealing her “claim for reconsideration,” letters to the Office dated April 22 and May 22, 2003 in which appellant stated that she was going to submit a statement and additional records from Dr. Waddington and a letter dated June 26, 2003 to her attorney addressing correspondence and telephone calls related to her claim. Appellant also submitted a letter dated June 3, 2003 from Dr. C. Alex Alexander, who stated that she had been Chief of Staff from 1991 through 1995, that she had selected appellant to work as Chief of Psychiatry, and that appellant’s job performance was outstanding.

By decision dated July 25, 2003, the Office denied appellant’s request for reconsideration, stating that the evidence she submitted was immaterial and irrelevant and did not warrant a merit review.¹

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees’ Compensation Act, the Office’s regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).³

To establish that she sustained emotional stress from her job, an employee must show that her disability results from an emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment.⁴ Disability is not compensable if it results from such factors as an employee’s fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

¹ Appellant submitted additional evidence after the Office’s July 25, 2003 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² Section 10.606(b)(2)(i-iii).

³ Section 10.608(a).

⁴ 5 U.S.C. §§ 8101-8193; *Robert W. Jones*, 51 ECAB 137, 141-42 (1999).

⁵ *Clara T. Norga*, 46 ECAB 473, 480 (1995); *Lillian Cutler*, 28 ECAB 125 (1976).

ANALYSIS

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by the Office. Appellant's emotional condition claim was denied on the grounds that she did not establish any compensable employment factors. Dr. Waddington's April 17, 2003 report is not relevant because it does not provide any further support in establishing that appellant sustained a compensable factor. Appellant's June 4, 2003 statement reiterates her prior contentions that she was not completely healed from her first emotional condition when she returned to work and that the agency misled her into filing a new claim.⁶ Appellant had previously stated that she felt the harassment from her first claim caused her present anxiety and the record contained descriptions of her emotional condition and medical treatment. Her statement in the letter that her work in 1991 did not involve inpatient care does not present evidence of a compensable factor of employment because it addresses her employment status in 1991. Appellant's letter does not show that the Office erred in applying or interpreting the law or present a new legal argument. Appellant's letters to the Office dated March 20, April 22 and May 22, 2003 are not relevant because they do not address compensable factors of employment. Further, Dr. Alexander's June 3, 2003 letter is not relevant because it addresses appellant's job performance from 1991 to 1995, not the claimed factors relating to the present claim. Appellant's June 26, 2003 letter to her attorney addressing correspondence and telephone calls is irrelevant to the main issue of her claim.

CONCLUSION

Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, appellant has failed to support her request for reconsideration. The Board finds that the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 4, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member