



began after she sustained a right rotator cuff injury while at work and had to work with restrictions. In support of her claim, appellant submitted witness statements and medical evidence from Dr. Domingo Cerra, a psychiatrist, which noted that she had experienced problems with the postmaster since her work-related shoulder injury and diagnosed an adjustment reaction, depressive and anxiety disorder.

By decision dated October 23, 2002, the Office denied appellant's claim on the grounds that she had not established that she sustained an emotional condition in the performance of duty. The Office found that she had not established any compensable employment factors.

Appellant disagreed with this decision and requested a hearing which was held on October 20, 2003. She submitted another witness statement which generally attested to her allegation of harassment by the postmaster. In a November 12, 2003 letter, appellant's attorney argued that a letter from the postmaster advising clarification from appellant's physician with respect to a return to work demonstrated harassment.

The employing establishment submitted documents which included statements from Postmaster Wise, a union steward, several coworkers and appellant's former postmaster.

By decision dated January 20, 2004, an Office hearing representative affirmed the denial of appellant's emotional condition claim. The Office hearing representative found that the factual evidence did not support that she was subjected to disparate treatment or harassment by Postmaster Wise and there was no evidence of error or abuse in the postmaster's actions. The hearing representative found that appellant had not established any compensable employment factors.

On April 27, 2004 appellant filed an appeal with the Board. In an order dismissing appeal dated September 24, 2004, the Board granted her request to dismiss her appeal in order that she could request reconsideration before the Office.<sup>1</sup>

In a letter dated January 20, 2005, appellant's attorney requested reconsideration. Copies of witness statements previously of record dated March 28, 2002 from Kelly Roberts, April 12, 2002 from Katherine Ellis, April 13, 2002 from Julie Otero and October 12, 2003 from Cynthia Cogdell were submitted in support of appellant's contention that she was singled out by Postmaster Wise and treated differently. In an August 25, 2004 statement, she responded to the statements and comments made by employing establishment personnel and coworkers concerning the nature of her work and her ability to work while on medication. In a January 25, 2005 statement, appellant reasserted that she was harassed by Postmaster Wise. No new evidence was submitted.

By decision dated March 10, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit

---

<sup>1</sup> Docket No. 04-1350 (issued September 24, 2004).

review of the January 10, 2004 decision. The Office found that the evidence was either duplicative of evidence already in the case record or was not relevant and pertinent new evidence.<sup>2</sup>

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act<sup>3</sup> the Office's regulations provide that 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.<sup>4</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The relevant issue in this case is a factual one: whether appellant has established any compensable factors arising in the performance of her federal duties.<sup>7</sup>

In support of her request for reconsideration, appellant submitted copies of witness statements which were previously of record and reviewed in the Office hearing representative's January 20, 2004 decision. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup> The witness statements dated March 28, 2002 from Ms. Roberts, dated April 2, 2002 from Katherine Ellis and dated April 13, 2002 from Ms. Otero are duplicative of evidence previously considered. Appellant's argument that the witness statements supported her contention that she was singled out by Postmaster Wise and treated differently is repetitious of earlier claims which

---

<sup>2</sup> The Office received additional evidence after it issued the March 10, 2005 decision. The Board's jurisdiction on appeal is limited to a review of the evidence, which was in the case record before the Office at the time of its final decision; see 20 C.F.R. § 501.2(c). The Board is precluded from reviewing this evidence. To the extent that any of this evidence may represent new evidence, appellant may resubmit this evidence to the Office with a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.607(a).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> See *George H. Clark*, 56 ECAB \_\_\_\_ (Docket No. 04-1572, issued November 30, 2004) (regarding development of claims for an emotional condition).

<sup>8</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

the Office considered in the January 20, 2004 decision. This evidence is insufficient to require a reopening of the case for further merit review.

Additionally, appellant's letters of August 25, 2004 and January 25, 2005 are considered cumulative in nature as they essentially repeated her prior allegations and contained no new relevant evidence or argument to support that she was discriminated against, was the subject of harassment or that the employing establishment erred or acted abusively. 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. Furthermore, she failed to submit relevant new and pertinent evidence not previously considered by the Office.

As appellant did not meet any of the necessary regulatory requirements, she was not entitled to a merit review.<sup>9</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>9</sup> See *James E. Norris*, 52 ECAB 93 (2000).