



### **FACTUAL HISTORY**

This is the third appeal in this case.<sup>3</sup> By decision dated April 11, 2005, the Board affirmed an Office decision dated August 18, 2004 that denied appellant's request for reconsideration. By decision dated December 17, 2003, the Board affirmed a June 21, 2002 Office decision that affirmed a January 22, 2002 decision, denying appellant's emotional condition claim,<sup>4</sup> and a December 18, 2002 decision, denying her request for reconsideration. The Board's prior decisions are incorporated herein by reference.

Following the Board's April 11, 2005 decision, appellant requested reconsideration by the Office. She contended that the Board's April 11, 2005 decision was incorrect because the Board did not review new evidence that she submitted. She argued that the Office improperly declined to conduct a merit review of her claim in its August 18, 2004 decision. Appellant also addressed the employment factors that she contended were the cause of her emotional condition.

By decision dated July 28, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>5</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> When an application for review of the merits of a claim does not meet at least one of these

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<sup>3</sup> Docket No. 05-172 (issued April 11, 2005); Docket No. 03-1574 (issued December 17, 2003).

<sup>4</sup> On July 6, 2001 appellant filed an occupational disease claim alleging that her depression was caused by employment factors.

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>7</sup>

### **ANALYSIS**

In support of her request for reconsideration, appellant did not submit any new evidence to the Office. She contended that the Office improperly declined to conduct a merit review of her claim in its August 18, 2004 decision. However, in its April 11, 2005 decision, the Board found no error in the Office's August 18, 2004 decision. Therefore, her contention does not constitute new relevant and pertinent evidence. Appellant argued that the Board erred in its April 11, 2005 decision because it did not consider new evidence she submitted to the Board. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time of its final decision.<sup>8</sup> The Board had no jurisdiction to consider new evidence submitted with her prior appeal to the Board. In support of her reconsideration request, appellant also addressed the employment factors that she contended were the cause of her emotional condition. However, these employment factors were previously considered by the Office and therefore do not constitute new relevant and pertinent evidence. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied her claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.

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<sup>7</sup> 20 C.F.R. § 10.608(b).

<sup>8</sup> See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 28, 2005 is affirmed.

Issued: March 15, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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