

<sup>1</sup> Docket No. 05-224 (issued July 22, 2005).

September 24, 2002 arbitration decision which rescinded an April 25, 2002 letter of warning issued by the employing establishment to appellant for failure to follow instructions on March 27, 2002, demonstrated that the employing establishment acted abusively or unreasonably.<sup>2</sup> The Board, however, found that appellant failed to submit rationalized medical evidence establishing that his emotional condition was caused by the accepted employment factor. Accordingly, the Board affirmed as modified the Office's April 23 and July 19, 2004 Office decisions denying appellant's emotional condition claim. It also affirmed the Office's October 1, 2004 decision finding that the Office properly denied appellant's request for reconsideration. The Board found that the evidence submitted was duplicative and cumulative in nature and, thus, insufficient to warrant a merit review of the claim.

By letter dated July 11, 2006, appellant, through his attorney, requested reconsideration before the Office. He submitted duplicate copies of a grievance filed against the employing establishment, the September 24, 2002 arbitration decision, medical reports of Dr. James R. Booth, an attending Board-certified psychiatrist, dated April 5 and 18, 2002 and January 16, February 25, March 31, May 5 and June 10, 2004, and a June 10, 2004 prearbitration settlement agreement. Counsel argued that the noted medical evidence established that appellant sustained an emotional condition while in the performance of duty.

In a decision dated October 13, 2006, the Office denied appellant's request for reconsideration. It found that the evidence submitted was irrelevant and repetitious in nature and, thus, insufficient to warrant a merit review of the claim.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>3</sup> the Office's regulation 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 benefits, 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 of the merits.

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<sup>2</sup> The September 24, 2002 arbitration decision determined that the employing establishment's failure to respond properly to appellant's claim that he was mentally ill at a predisciplinary interview and to recommend the Employee's Assistance Program or the Family Medical Leave Act was punitive rather than corrective in nature.

<sup>3</sup> 5 U.S.C. §§ 8101-8193. 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)(1)-(2).

<sup>5</sup> *Id.* at § 10.607(a).

### **ANALYSIS**

By letter dated July 11, 2006, appellant disagreed with the finding that he did not sustain an emotional condition while in the performance of duty because the medical evidence of record did not establish that the claimed condition was causally related to the accepted compensable factor of his federal employment, namely a September 24, 2002 arbitration decision finding that the employing establishment acted abusively or unreasonably in handling his emotional condition claim. This was decided on the merits by the Board's decision dated July 22, 2005.<sup>6</sup> The relevant issue in this case is whether appellant's emotional condition was causally related to the accepted factor of his employment.

Appellant submitted the September 24, 2002 arbitration decision, Dr. Booth's medical reports dated April 5 and 18, 2002 and January 16, February 25, March 31, May 5 and June 10, 2004, and a June 10, 2004 prearbitration settlement agreement. 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>7</sup> The arbitration decision, Dr. Booth's reports and prearbitration settlement agreement were already of record at the time appellant requested reconsideration and had been considered by the Office. The Board finds that the evidence submitted is insufficient to reopen appellant's claim for a merit review as it is duplicative and cumulative of evidence already of record.

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of his request for reconsideration. Further, he 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. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.<sup>8</sup>

### **CONCLUSION**

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

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<sup>6</sup> See *supra* note 1.

<sup>7</sup> See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>8</sup> See *James E. Norris*, 52 ECAB 93 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board