United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 06-1836**
	)	**Issued: March 22, 2007**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICES, Norfolk, VA, Employer	)	

Appearances:
Karen M. Rye, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument February 27, 2007

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2006 appellant filed a timely appeal of a May 9, 2006 decision of the Office of Workers' Compensation Programs, denying her application for reconsideration without merit review of the claim. Pursuant to 20 C.F.R. § 501.3, the Board's jurisdiction is limited to final decisions issued within one year of the filing of the appeal. The Board does not have jurisdiction over a September 16, 2002 merit decision denying her claim for compensation.

ISSUE

The issue is whether the Office properly refused to reopen the case for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The case was before the Board on a prior appeal.[1] Appellant filed an occupational claim alleging that she sustained an emotional condition causally related to her federal employment.

[1] Docket No. 04-673 (issued October 12, 2005).

She alleged that she was subject to harassment and a hostile work environment and she alleged a number of incidents of administrative error. The claim was denied by decisions dated August 14, 1996, November 23, 1998 and September 16, 2002. The Office found that appellant did not allege and substantiate any compensable work factors. The Board set aside an October 21, 2003 Office decision finding that appellant's request for reconsideration was untimely. The case was remanded to the Office for appropriate consideration of a timely reconsideration request.

The application for reconsideration was dated September 15, 2003. Appellant argued that there was error or abuse by the employing establishment with regard to disclosure of medical information. She stated that the employing establishment was required by 5 U.S.C. § 6311 to inform the claimant when information collected will be used for purposes other than those stated in section 6311. In addition, appellant argued that disclosure of medical information without her consent was prohibited. She also stated that she was entitled to sick leave as she had submitted a July 22, 1987 request for sick leave with a medical report dated July 22, 1987 from Dr. Suzanne Dundon. Appellant submitted copies of the leave request and the medical report. Dr. Dundon stated that appellant would be disabled for three weeks. She referred to a September 20, 1995 letter from a former supervisor, Alton R. Lassiter. According to appellant, at the time of the letter, medical information had not been released by her to Mr. Lassiter. She resubmitted a copy of the September 20, 1995 letter. Mr. Lassiter indicated that he had retired in 1992, but he recalled at least two occasions where appellant requested either advanced sick leave or leave without pay. He stated that one request was substantiated by a physician stating that appellant's symptoms were indicative of a person who had suffered child abuse, rape or a traumatic incident of some type. Mr. Lassiter also stated that he recalled the leave request was approved. With respect to medical evidence, appellant submitted a September 10, 2003 report from Dr. Udaya Shetty, a psychiatrist.

By decision dated May 9, 2006, the Office determined that the request for reconsideration was not sufficient to warrant further merit review of the claim.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his 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."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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.[2]

ANALYSIS

The Office did not accept that appellant established any compensable work factors with respect to her claim for compensation. On reconsideration, appellant argued that she had a right to use sick leave and this was a compensable factor of employment. She did not clearly explain how a right to sick leave resulted in a compensable work factor. To the extent appellant was arguing that the employing establishment erroneously denied her sick leave request from July 22, 1987, there was no relevant evidence submitted. The July 22, 1987 request for advanced sick leave was previously submitted prior to the November 23, 1998 merit decision. The brief July 22, 1987 report from Dr. Dundon appears to be new evidence, but it is not relevant to the establishing of a compensable work factor regarding sick leave or other factual allegation. It is also of no relevance regarding a medical issue. The Office had not accepted any compensable work factors and appellant must first establish a compensable work factor before the medical evidence is relevant.[3]

The reconsideration request also argued the employing establishment erred in disclosing medical information. Appellant refers to 5 U.S.C. § 6311, without providing relevant explanation.[4] The Board finds that appellant's arguments have no reasonable color of validity.

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[2] *Eugene F. Butler*, 36 ECAB 393 (1984).

[3] *See James W. Scott*, 55 ECAB 606 (2004).

[4] 5 U.S.C. § 6311 provides only that the Office of Personnel Management may prescribe regulations regarding leave as necessary. It does not discuss disclosure of medical information. Appellant also referred to 42 C.F.R. Part 2, without providing a more specific citation.

Where the legal argument presented has no reasonable color of validity, the Office is not required to reopen the case for merit review.[5] The Board notes that appellant submitted a September 20, 1995 letter from a former supervisor, Mr. Lassiter. This letter had been submitted prior to the November 23, 1998 Office decision and was considered by the hearing representative in that decision. It does not constitute new evidence, nor does it support a new and relevant legal argument.

Appellant did submit a new medical report from Dr. Shetty. As noted, the underlying merit issue was not a medical issue as the Office had not accepted any compensable work factors. Appellant did not submit new and relevant evidence on reconsideration.

The Board accordingly finds that appellant did not meet any of the requirements of section 606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a point of law or advance a new and relevant legal argument. The legal arguments raised were not supported by the evidence of record and had no reasonable color of validity. Moreover, appellant did not submit any new and relevant evidence. The only new evidence submitted were medical reports that were not relevant to the issue of compensable work factors. Since appellant did not meet the requirements of section 606(b)(2), the Office properly refused to reopen the claim for merit review.

CONCLUSION

Appellant did not show that the Office erroneously applied or interpreted a point of law, advance a new and relevant legal argument or submit new and relevant evidence.

[5] *See Norman W. Hanson*, 40 ECAB 1160 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2006 is affirmed.

Issued: March 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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