

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

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**B.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 07-35  
Issued: March 15, 2007**

*Appearances:*

*Edward L. Daniel, for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 2, 2006 appellant, through her representative, filed a timely appeal from a November 1, 2005 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration. As the most recent merit decision was issued October 14, 2004, more than one year from the date of the filing of this appeal, the Board lacks jurisdiction over the merits of this case.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision.

**ISSUE**

The issue is whether the Office properly denied appellant's request for further review of the merits of her claim under 5 U.S.C. § 8128.

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<sup>1</sup> 20 C.F.R. §§ 501.2(c), 501.3.

## **FACTUAL HISTORY**

On February 10, 2004 appellant, then a 50-year-old bulk mail technician, filed an occupational disease claim alleging that she sustained depression and anxiety due to discrimination and harassment at work. She attributed her stress to a coworker threatening to push a container into her, a supervisor threatening her with disciplinary action and the denial of light-duty work on December 30, 2002. Appellant further alleged that a supervisor physically abused her on January 17, 2003 and a coworker physically and verbally abused her in July 2003. She stopped work on October 29, 2002 and returned to work on November 26, 2002.

By decision dated May 26, 2004, the Office denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. The Office determined that she had not established any compensable employment factors.

On June 13, 2004 appellant requested reconsideration. In a decision dated October 14, 2004, the Office denied modification of its May 26, 2004 decision. The Office again found no compensable employment factors.

On October 13, 2005 appellant again requested reconsideration of her claim. She submitted form reports verifying that she received treatment on June 14, 20, 29 and August 19, 2005 from Dr. Raymond L. Hoobler, Ph.D., a psychologist. Appellant also submitted a medical report dated July 18, 2005 from Dr. Hoobler and Dr. Seeme Ahmad, a psychiatrist, supporting her application for disability retirement due to an employment-related emotional condition.

By decision dated November 1, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant merit review of her claim.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</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>3</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>4</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>5</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[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."

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> 20 C.F.R. § 10.608(b).

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>6</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>7</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>8</sup>

### **ANALYSIS**

In its May 6 and October 14, 2004 decisions, the Office denied appellant's claim for an emotional condition after finding that she had not established a compensable employment factor. The relevant issue, consequently, is the factual question of whether appellant has established a compensable factor of employment.

In support of her request for reconsideration, appellant submitted form reports dated June and August 2005 verifying that she received treatment from Dr. Hoobler and a medical report dated July 18, 2005 from Dr. Hoobler and Dr. Ahmad. The Office, however, is not required to consider medical evidence in an emotional condition case where no work factors have been established.<sup>9</sup> The medical reports, consequently, are not relevant to the underlying issue in this case, which is the factual question of whether appellant has established a compensable employment factor. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup>

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.<sup>11</sup>

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim under section 8128.

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<sup>6</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>8</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>9</sup> See *Richard Yadron*, 57 ECAB \_\_\_\_ (Docket No. 05-1738, issued November 8, 2005).

<sup>10</sup> *Patricia G. Aiken*, 57 ECAB \_\_\_\_ (Docket No. 06-75, issued February 17, 2006).

<sup>11</sup> See 20 C.F.R. § 10.608(b); *Richard Yadron*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 1, 2005 is affirmed.

Issued: March 15, 2007  
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