

consider the application for reconsideration under the proper standard for a timely application. As the Board noted, appellant's July 13, 2006 letter indicated that an "arbitrator's summary" was enclosed, but the record did not contain such evidence.

The current case record indicates that, on October 23, 2006, the Office received an arbitrator's decision dated April 19, 2006. The decision was issued pursuant to a grievance filed by appellant, and found that the employing establishment violated the labor/management agreement when it issued a March 9, 2005 letter of reprimand. The grievance was denied with respect to other allegations.

By decision dated August 8, 2007, the Office found that appellant's July 13, 2006 application for reconsideration was insufficient to warrant merit review of the claim. The Office did not discuss the arbitrator's decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."² Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.³

ANALYSIS

The July 14, 2005 Office merit decision denied appellant's claim for an emotional condition on the grounds that she had not established a compensable work factor. As noted above, a claimant is entitled to a review of the merits of her claim on reconsideration if she submits "relevant and pertinent evidence not previously considered by [the Office]." On October 23, 2006 the Office received an arbitrator's decision dated April 19, 2006 on a grievance filed by appellant against the employing establishment. In this decision, the arbitrator found that a March 9, 2005 letter of reprimand was a violation of the employment agreement.

It is well established that administrative or personnel matters, such as disciplinary actions, may be compensable factors of employment where the evidence discloses error or abuse by the employing establishment.⁴ Since the April 19, 2006 arbitrator's decision discusses error

¹ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁴ *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

by the employing establishment, it is relevant to the issue of a compensable work factor. As the claim for compensation was denied on the grounds no compensable work factor was established, the arbitrator's decision is relevant and pertinent to the basis for the denial of compensation in the July 14, 2005 Office decision.

Accordingly, the Board finds the April 19, 2006 arbitrator's decision constitutes "relevant and pertinent evidence not previously considered by [the Office]." Appellant has met one of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore she is entitled to a review of the merits of her claim. The case will be remanded to the Office for a merit decision.

CONCLUSION

Appellant is entitled to a merit review of her claim as she submitted new and relevant evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 8, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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