

On February 17, 2009 appellant, then a 45-year-old management assistant, filed a claim alleging that her anxiety stress reaction and migraine headache were a result of harassment by

her supervisor. She alleged, among other things, threats to fire her, harassment, termination of telework, failure to accommodate restrictions, setting her up, misleading her, a retaliatory performance evaluation, change of job title, manipulation and reprisal.

On August 13, 2009 the Office denied her claim on the grounds that she failed to establish as factual any of the alleged factors of employment. It noted that, in the absence of an established compensable factor of employment, the submitted medical evidence would not be discussed.

On January 27, 2010 appellant requested reconsideration. She stated that her licensed clinical psychologist/psychiatrist would mail new comprehensive medical reports supporting and describing the emotional condition she sustained as a result of a work-related injury. Appellant reiterated that her employer and supervisor exposed her to unconscionable and unfair treatment. She alleged threats to remove her from employment, refusal to accommodate restrictions, false accusations, hostile work environment and eventual removal.

In a decision dated May 6, 2010, the Office denied appellant's request for reconsideration. It noted that no medical records accompanied her request. The Office found that appellant's statement of unfair treatment was vague and general and her allegations previously considered in denying her claim. It found that her statement was therefore cumulative and did not warrant a merit review of the August 13, 2009 decision.

On appeal, appellant submitted 22 pages of medical records to support her claim that she asked the Board to review.

### **LEGAL PRECEDENT**

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>1</sup> The employee shall exercise this right through a request to the district Office.<sup>2</sup>

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup>

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> A timely request for reconsideration may be granted if the

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.605.

<sup>3</sup> *Id.* at § 10.606.

<sup>4</sup> *Id.* at § 10.607(a).

Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### **ANALYSIS**

The only decision the Board may review is the Office's May 6, 2010 nonmerit decision denying her request for reconsideration.

The issue is whether the request meets one of the standards for obtaining a merit review of her case.

Appellant's request did not show that the Office erroneously applied or interpreted a specific point of law. It did not advance a relevant legal argument not previously considered by the Office. Appellant's request contained no relevant and pertinent new evidence not previously considered by the Office. As noted, no medical evidence accompanied her request. The Office did not deny appellant's claim for lack of sufficient medical evidence. It denied her claim finding that the factual evidence did not substantiate her allegations of harassment or other administrative error or abuse. The issue was one of proof, documentation corroborating the harassment alleged.

Appellant's argument that her employer and supervisor exposed her to unconscionable and unfair treatment is not new. The Office considered her allegations when it adjudicated her case on August 13, 2009. Because appellant's request for reconsideration does not meet at least one of the standards for obtaining a merit review of her case, the Board will affirm the Office's May 6, 2010 decision denying her request.

On appeal, appellant submitted medical records for the Board to review. This evidence was not before the Office and cannot be considered by the Board for the first time on appeal.<sup>6</sup> The Board lacks jurisdiction to review this material.

### **CONCLUSION**

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

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<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2011  
Washington, DC

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

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

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