

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANGELA C. FAVORS and DEPARTMENT OF THE TREASURY,  
FEDERAL LAW ENFORCEMENT TRAINING CENTER, Glynco, GA

*Docket No. 02-89; Submitted on the Record;  
Issued August 6, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On November 10, 1998 appellant, then a 35-year-old accounting technician, filed an occupational disease claim, alleging that a hostile work environment caused depression. In support of her claim, she submitted an October 30, 1998 report in which Thomas E. McCloud, Ph.D., diagnosed generalized depression. By letter dated December 1, 1998, the Office informed appellant of the type evidence needed to support her claim. In response, she submitted evidence regarding claims she had filed with the Equal Employment Opportunity (EEO) Commission and regarding a claim she had filed for a wrist condition.

By decision dated February 4, 1999, the Office found that appellant had not sustained an injury in the performance of duty. On February 4, 2000 appellant requested reconsideration and submitted additional evidence. The employing establishment submitted a statement from Julie Martin, financial operations officer. In a March 23, 2000 decision, the Office denied modification of the prior decision. On March 23, 2001 appellant again requested reconsideration and submitted additional evidence. By decision dated July 3, 2001, the Office denied appellant's request for reconsideration. On July 10, 2001 appellant requested reconsideration, and in a July 26, 2001 decision, the Office again denied her reconsideration request. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decisions before the Board in this appeal are those decisions of the Office dated July 3 and 26, 2001 denying appellant's applications for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated March 23, 2000 and

the filing of appellant's appeal on October 4, 2001, the Board lacks jurisdiction to review the merits of her claim.<sup>1</sup>

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>2</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>5</sup>

With her reconsideration requests, appellant submitted a number of documents that are irrelevant to the issue in the instant case, *i.e.*, whether she met her burden of proof to establish that she sustained an emotional condition in the performance of duty. This evidence consisted of, *inter alia*, medical evidence, appellant's intent to file a congressional inquiry, information regarding her apartment rental, information regarding a vacancy announcement, and evidence regarding an EEO investigation in August 1999, eight months subsequent to the filing of the instant claim. She also submitted evidence regarding an investigation into a threat made by her regarding a coworker, and duplicates of evidence previously of record.

The Board has long held that the submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>6</sup> Likewise, evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>7</sup> As appellant submitted no new relevant evidence and did not articulate any legal argument with a reasonable color of validity in support of her request

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1) and (2) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>6</sup> *Sandra B. Williams*, 46 ECAB 546 (1995).

<sup>7</sup> *David J. McDonald*, 50 ECAB 185 (1998).

for reconsideration, the Board finds that the Office properly denied appellant's application for reconsideration of her claim.<sup>8</sup>

The decisions of the Office of Workers' Compensation Programs dated July 26 and July 3, 2001 are hereby affirmed.

Dated, Washington, DC  
August 6, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).