

FACTUAL HISTORY

On April 23, 2003 appellant, then a 48-year-old program support assistant, filed an occupational disease claim alleging that on March 10, 2003 she first realized that her emotional stress was caused by factors of her federal employment. Appellant alleged that her boss had been causing her stress for the past four and one-half years. She noted that he had degraded her and yelled at her, made her work in a hostile environment and made her feel stupid when she did not do her job well. On the claim form, David J. Kuboushek, appellant's supervisor, stated that "I do not know what the problem is."

By letter dated June 4, 2003, the Office advised appellant that it had only received her occupational disease claim form, which was insufficient to establish her claim. The Office requested that appellant submit additional factual and medical information in support of her claim.

On June 25, 2003 appellant submitted a detailed narrative statement indicating that she had worked for Mr. Kuboushek for over four years and that her emotional condition was due to weekly intimidation by him. Appellant stated that she was hired as a secretary and when an accounting technician who was performing duties related to travel left, Mr. Kuboushek gave her the job. She noted that the former employee was a GS-6 and that Mr. Kuboushek refused to promote her to this grade level because she was not an accounting technician. She noted that, as additional accounting duties were given to her, she asked Mr. Kuboushek for a promotion and he again denied her request. After she researched the description of travel clerk positions in other employing establishment offices and discovered that they were grades 6 or 7, Mr. Kuboushek again denied her requests for a promotion. She further noted that she rewrote her position description and submitted it to Mr. Kuboushek.

Appellant alleged that Mr. Kuboushek told her to come to his door when she had a question, but when she did so he became angry. Appellant started sending questions to him *via* email and, on one occasion, Mr. Kuboushek called her into his office to ask why she did this. She responded that he could answer her on his own time and she would not upset him anymore. Mr. Kuboushek allegedly replied by yelling at her and stating that she was like a nagging wife and she was not his wife. She discussed her new position description, Mr. Kuboushek's reaction and comments with a union representative who said he would talk to Mr. Kuboushek.

Appellant subsequently received a promotion to the GS-6 grade level and afterwards Mr. Kuboushek would watch over her shoulders as she worked and criticize her work by saying "this is not rocket science." She asked Mr. Kuboushek during a performance review why he yelled at her when female employees who sat in the back made the mistakes and he replied that he knew it was not right but, she was the first one he saw when he came out of his office and by the time he reached the other women he would have cooled off.

Appellant stated that other coworkers would not submit statements because they feared retaliation at the employing establishment. Appellant stated that she did not have any stress that she could not handle noting that she could handle her mother's hospitalization. She and the union representative were discouraged by personnel in the human resources office from filing an

occupational disease claim. She noted that she was subsequently demoted and that she wished to return to the higher grade level position.

In a complaint dated March 16, 2003, appellant alleged that, at a meeting on March 7, 2003 with Mr. Kuboushek, Karen Wilken, an employing establishment voucher auditor, and Mary Beth Dowling, an employing establishment employee, she disagreed with comments made regarding employee travel issues. Appellant stated that, on March 10, 2003 at 11:00 a.m., Mr. Kuboushek shut his office door and yelled at her about ruining the credibility of his department at the meeting and that throughout the entire day he glared at her in an intimidating manner, which made her feel uncomfortable. On March 13, 2003 at 2:00 p.m., Mr. Kuboushek called her into his office to discuss an accounting report concerning travel claims and blamed her for discrepancies in the report. Appellant alleged that Mr. Kuboushek told her that one of the women in accounting told him that she refused to prepare the report. She denied this accusation. Appellant left Mr. Kuboushek's office and reviewed the report. She discovered that 98 percent of the mistakes were made by someone else in accounting. Appellant noted that, throughout the entire day, the office environment was filled with hostility towards her by Mr. Kuboushek. On March 14, 2003 at approximately 9:00 a.m., appellant stated that Mr. Kuboushek called her into his office to discuss a travel survey that she sent out over "Outlook." She noted that Mr. Kuboushek accused her of trying to get a "59'er" award because she was jealous of other women who received such an award. She further noted that Mr. Kuboushek became angry when she asked who told him that she refused to prepare the accounting report. Appellant indicated that she walked out of Mr. Kuboushek's office shaking and emotionally upset. Appellant concluded that Mr. Kuboushek had been setting her up for failure over the past four years.

Appellant submitted an undated letter she wrote to Dr. Andrew H. Mebane, a Board-certified psychiatrist, which contained a conversation she had with Pam Cooley, an employing establishment employee, on April 24, 2003 about her demotion. She submitted disability certificates from Cynthia Miller, a nurse practitioner, and Dr. Larry P. Stieglitz, a Board-certified family practitioner, dated March 17, 24 and 28, 2003. Appellant also submitted an April 8, 2003 statement from Louie Goldberg, a licensed social worker, indicating that she was physically and emotionally unable to work on March 14, 2003 due to difficulties at work and that she went home. Mr. Goldberg stated that appellant experienced difficulty again on March 17, 2003 and that she saw Dr. William E. Lofthouse, an employing establishment psychiatrist, in the employing establishment's mental health clinic. He noted that Dr. Lofthouse arranged for appellant to see a private physician. In a May 2, 2003 memorandum, appellant requested a change to a lower grade position but noted that it was an involuntary request.

In a December 13, 2000 letter, appellant described an incident where she became upset when Mr. Kuboushek sternly gave her directions for determining which control point (CP) travel money should be taken from.

Appellant alleged that on March 24, 2003 she told Mr. Kuboushek that she was sick and he replied "tough it out," while he allowed three other employees to go home sick. On October 31, 2001 appellant indicated that Mr. Kuboushek yelled at her when he asked her about missing a meeting that he specifically ordered her to attend. Appellant stated that she had not been notified about the change in location for the meeting. On February 26, 2003 appellant

noted that Mr. Kuboushek ignored her request to ask Ms. Wilken about employees using the Priceline website to save money.

By letter dated July 9, 2003, the Office requested that the employing establishment respond to appellant's allegations.

Appellant also alleged that she began working for Mr. Kuboushek in 1998 and things went well during the first few months. She noted that, at the end of each year, Mr. Kuboushek was rude to everyone due to the budget so she brushed off the things he said. She stated that his rude comments started to become abusive noting that she opened a program differently than Mr. Kuboushek and he would respond that "it's not rocket science." Appellant further stated that for two and one-half years, she took on the "VAEA" because Ms. Wilken refused to do so and Mr. Kuboushek would not talk to her about it. She noted that for two years she performed duties related to the Combined Federal Campaign (CFC) fundraiser and three consecutive years of decorating hall windows for the same reason. She reiterated her prior allegations.

The employing establishment submitted an August 5, 2003 letter from Dennis E. Saub, a human resources employee. In addressing appellant's allegations, Mr. Saub stated that, although he could not attest to the issues involving appellant and Mr. Kuboushek, no formal grievances had been filed by any of Mr. Kuboushek's other employees since his tenure began in November 2001. He noted that appellant's allegation that she and her union representative were discouraged from filing an occupational disease claim referred to a meeting between himself, appellant, Sherrie Baird, an Equal Employment Opportunity program manager, and Elizabeth Dye, union president, on March 17, 2003 at 8:00 a.m. He stated that there was no discussion about the filing of a claim, but there was a discussion about appellant filing a grievance against Mr. Kuboushek and her request to be reassigned or changed to a lower grade if she did not want to continue working with Mr. Kuboushek. Mr. Saub noted that Ms. Dye recalled a subsequent conversation that took place with appellant in which Ms. Dye advised appellant that the only way to possibly get reimbursement for counseling would be to file a claim with the Office. He further noted medical notes appellant submitted indicating that she could return to work. Mr. Saub stated that, after appellant worked for Ms. Dowling, who was designated the lead travel person by Mr. Kuboushek, for two days she left the worksite and returned to human resources stating that she could not work under Ms. Dowling. Appellant was placed on administrative leave and she was told to subsequently return to work in a temporary position until another permanent position became available. Mr. Saub related that nothing prevented appellant from applying for or being selected for a promotion and that appellant voluntarily took a downgrade to another position in a different section. He noted that appellant had requested \$30,000.00 for counseling but, he was not aware of any leave being taken for this purpose.

In response to appellant's April 4, 2003 allegation regarding the assignment of work, Mr. Saub stated that the supervisor had the right to supervise her work. He contended that appellant's statement that Ms. Wilken was misusing travel regulations was wrong. He explained that Ms. Wilken and Ms. Dowling agreed upon the proper procedure. In response to appellant's allegation that nothing else was bothering her at the time, Mr. Saub noted appellant's statements she made during the March 17, 2003 meeting that her mother was in the hospital and that her son was in the military and stationed in Kuwait.

In a July 17, 2003 memorandum, Mr. Kuboushek described the duties of appellant's GS-5 secretarial position and the GS-6 accounting technician position. He noted that appellant was not qualified for the GS-6 position and that human resources was not allowing any position descriptions to be upgraded for the secretaries. Regarding appellant's eventual promotion, Mr. Kuboushek stated that it was premature even though appellant had worked in the job for four years. He noted that appellant was not accomplishing the full scope of the job at the GS-5 level. He explained that appellant had very little office work experience when he first hired her at the GS-3 level. He noted that, contrary to appellant's belief, she was not performing accounting work and described the duties of an accounting technician.

Regarding his statements about appellant's ability to perform her work duties, Mr. Kuboushek stated that appellant misinterpreted what he and other staff said. He noted that his use of the phrase "this is not rocket science" was not meant to be insulting. Mr. Kuboushek explained his responsibilities as a supervisor and his expectations of his employees. He told appellant that, while she was a GS-6, he wanted her to understand that she needed to elevate her skills to that level. Mr. Kuboushek stated that, when employees made mistakes, he discussed them with the employees. He stated that appellant interpreted talking in a stern tone as yelling. Mr. Kuboushek explained that he had a tendency to raise his voice due to a loss of hearing in his left ear from injuries suffered during the Vietnam War. Occasionally, he was unable to hear his voice volume when he communicated with the staff. He denied yelling at her and alleged that she misinterpreted his statements. He noted specific events that were taking place in appellant's life when she first made her allegations against him, which included her son being in the Army during the war in Iraq and her mother's heart attack and hospitalization during that same time period.

Mr. Kuboushek noted that appellant and Ms. Wilken disagreed about work-related issues and Mr. Kuboushek indicated that he discussed appellant's behavior during these disagreements with her. Mr. Kuboushek noted that he was going to talk to Ms. Wilken about the proper way to approach appellant, but stated that he did not have a chance to talk to her. He noted that appellant failed to attend a mandatory meeting on March 13, 2003 and that someone at the meeting stated that she refused to prepare a certain accounting report. Mr. Kuboushek noted that he had to show appellant how to research information to reconcile travel entries. He stated that he did not say or ask appellant anything about the travel survey she sent to all employees requesting feedback on her job performance without his approval because, although he did not approve of her actions, he believed the less he said would result in less tension. Mr. Kuboushek believed that appellant's actions showed his staff that he had little control of her and he noted a subsequent conversation with appellant regarding her inappropriate actions.

In response to appellant's allegation that she became startled or was made to relive things when she saw his name on memoranda or had to send him information, Mr. Kuboushek stated that he was not sure to what appellant was referring. As chief financial officer of the employing establishment he had to send information either electronically or by memorandum. He stated that when appellant returned to work he made arrangements based on her physician's instructions to have no contact with her. Regarding employees who have approached appellant about the way he treated them, Mr. Kuboushek noted that one named employee never worked for him and that he had a minor involvement with a former employee who took early retirement. He

further noted that, although appellant indicated that she needed money for counseling, the timesheets did not reflect that she was receiving counseling during work hours.

Mr. Kuboushek stated that he had been very patient with appellant, offered her assistance in the performance of her work duties and had other staff members assist her. He recognized appellant's service on special occasions such as, secretaries' week and Valentine's Day and that he and his wife attended appellant's wedding, even though he felt uneasy about doing so, and that appellant thanked him for a wedding gift. Mr. Kuboushek stated that, although appellant's job performance was marginal in some areas and average in other areas, he always gave her a positive performance appraisal and recommended her for a special contribution award in the amount of \$750.00. He noted that appellant gave him a thank you card for the award. Mr. Kuboushek further noted an incident in September 2000 where appellant pinched the chest of a male employee who wished to enter an office while she was standing in the doorway of the office. He indicated that appellant did not want to be a team player, noting that she told him that she would do her job in her own way. He stated that appellant's replacement, Kathy Wilson, was responsible for cleaning up the travel package and performed well based on comments from his staff while appellant did not pay attention to detail. Mr. Kuboushek indicated that there was stress in his department during the closing out of the fiscal year and everyone knew that, if he was sterner than usual, they were not to take it personally. He stated that he promoted teamwork and delegated responsibility. Mr. Kuboushek noted a situation where he had to delay the promotion of one of his employees because the person was not fulfilling the requirements of an upgraded position description. He granted appellant's request for time off from work and that he sometimes asked her if she had someone to maintain her workload, which most of the time she did. He noted that management granted any sick leave appellant took in conjunction with her breakdown in the amount of 96 hours.

In an August 5, 2003 memorandum, Mr. Kuboushek stated that appellant misinterpreted his comments about closing out the financial books at the end of the year. He did not recall what he did or did not say in regards to the statement "this is not rocket science." In response to appellant's contention that she took on two and one-half years of "VAEA" because Ms. Wilken refused to do so and he would not talk to her about it, Mr. Kuboushek stated that as a program assistant it was her responsibility to assume these duties. In assisting appellant in getting information for the CP, Mr. Kuboushek stated that appellant continually prepared travel orders for staff without proper authorization and that his voice tended to become sterner if he had to frequently repeat instructions. He noted that when employees, including appellant, made mistakes he would bring them to their attention.

In a December 9, 2003 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition while in the performance of duty. The Office found that appellant's allegations related to noncompensable employment factors.

On December 17, 2003 appellant requested reconsideration. She submitted duplicate copies of her March 16, 2003 complaint report, undated letter to Dr. Mebane, April 4, 2003 occupational disease checklist and December 13, 2000 and May 2, 2003 memoranda, Mr. Goldberg's April 8, 2003 letter and the March 17, 24 and 28, 2003 disability certificates of Dr. Stieglitz and Ms. Miller.

Appellant also submitted a handwritten note regarding a meeting with Dr. Stieglitz. In a March 31, 2003 memorandum, appellant stated that, when she returned to work on that date, she found her whole procedure for travel and contents of her desk completely changed. She noted that Ms. Dowling told her she did it, that she was not finished yet and that it was going to stay that way. Appellant further noted that Ms. Dowling stated “no” in reply to her request to have her system back. She stated that Ms. Dowling wanted things made easier for her, Mr. Kuboushek and Kathy Wilson, an employing establishment employee, and it was going to stay that way.

In a December 27, 2000 memorandum, appellant alleged that Mr. Kuboushek became upset with her when she did not include human resources’ information on their January calendar. Appellant noted on December 27, 2000 that she had almost completed the calendar when she asked Mr. Kuboushek if he wanted to include human resources’ information on the calendar. Appellant stated that Mr. Kuboushek responded that she should ask Don Sweeney in human resources whether he wanted the information to appear on the calendar. She indicated that Mr. Sweeney told her that he did not want their information on her calendar. Appellant noted that she completed the calendar and passed it out to their service “(RMS).” She stated that a couple of days later, Mr. Kuboushek was upset because human resources’ information was not on the calendar. Appellant explained to Mr. Kuboushek the prior conversations she had with him and Mr. Sweeney about the calendar and he snapped back that he needed to know when employees in human resources were on leave. She replied that she would try to find a way to do that.

In a December 19, 2003 statement, Ms. Dye responded to the statement in appellant’s denial letter that she did not have authorization to seek medical attention for her emotional condition. Ms. Dye stated that an emergency situation arose when appellant broke down in the human resources’ office due to the stress of the situation. Ms. Dye noted that Dr. Lofthouse spoke to appellant and decided that she should seek medical attention from her private physician, which he arranged.

In a December 17, 2003 letter, appellant described the incident where she broke down in a meeting with Ms. Dye, Ms. Baird and Mr. Saub. She indicated that Dr. Lofthouse talked to her and arranged for emergency treatment. She provided the names of witnesses who would submit statements about being mistreated by Mr. Kuboushek. Appellant stated that Mr. Kuboushek yelled at her when he was angry with other employees. She related that one day he admitted that, since she was the first person he saw when he came out of his office, she was the one he yelled at. She further stated that by the time Mr. Kuboushek reached the end of the hall he had cooled off and admitted that it was not right but, that was how things were. Appellant submitted correspondence between herself and Ms. Miller regarding the filing of an occupational disease claim.

By decision dated March 1, 2004, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decision.¹

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴

In emotional condition cases, the Office must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed to be factors of employment and may not be considered.⁵ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁶

¹ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c). The Board notes that appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Margaret S. Kryzcki*, 43 ECAB 496, 502 (1992).

⁶ *Donald E. Ewals*, 45 ECAB 111, 122 (1993).

Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.⁷ To establish entitlement, appellant is required to establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.

ANALYSIS -- ISSUE 1

Appellant has alleged harassment by Mr. Kuboushek, her supervisor, when he verbally abused her, criticized her work performance, denied her request for a promotion to an accounting technician at the GS-6 grade level, discouraged her from filing a claim with the Office and required her to work outside her job description by requiring her to work on the CFC fundraiser and decorate hall windows. Appellant stated that Mr. Kuboushek yelled at her, he called her a nagging wife and he used the phrase “it is not rocket science” when giving her work instructions. Mr. Kuboushek has denied yelling at appellant and calling her a nagging wife. He stated that appellant misinterpreted his stern voice as yelling. Mr. Kuboushek noted that he had a tendency to raise his voice due to a hearing loss in his left ear. He noted that on occasion he was unable to hear his own volume when he communicated with the staff. Mr. Kuboushek noted that closing out the fiscal year was a stressful time and that he may have been sterner than usual but, he explained that his employees were not to take it personally. He denied yelling at other employees and noted that one of appellant’s named witnesses had never worked for him. The Board notes that appellant did not submit any statements from coworkers who witnessed Mr. Kuboushek yelling at her.

Regarding appellant’s dissatisfaction with Mr. Kuboushek’s criticism of her work, the Board has held that when a supervisor is properly exercising his supervisory duties and responsibilities, a claimant’s reaction to such supervision is not compensable.⁸ Mr. Kuboushek stated that his use of the phrase “it is not rocket science” was not meant to be insulting. He explained his role and responsibilities as a supervisor and his expectations for his employees. Mr. Kuboushek noted that he had to show appellant how to perform certain job duties but, stated that he encouraged appellant to elevate her skills since she was a GS-6 and he had other employees provide assistance to appellant.

Mr. Saub responded to appellant’s allegation that she was discouraged from filing a claim by stating that this did not occur. He stated the only discussion that took place was about appellant filing a claim against Mr. Kuboushek and her request to be reassigned or changed to a lower grade position.

In response to appellant’s allegation that she was required to work outside her job requirements, Mr. Kuboushek stated that appellant was not forced to volunteer to perform such work. He noted that, as a program assistant, appellant maintained the responsibility to assume these duties more often than the other staff.

⁷ *Sherry L. McFall*, 51 ECAB 436 (2000); *Sherman Howard*, 51 ECAB 387 (2000).

⁸ *Janet I. Jones*, 47 ECAB 345 (1996).

In the present case, appellant has not submitted sufficient evidence to establish that she was harassed by Mr. Kuboushek as alleged.⁹ Appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work and her work environment which do not support her claim for an emotional disability.¹⁰ For this reason, appellant has failed to establish a compensable factor under the Act.

Appellant's allegation that her emotional condition was caused by Mr. Kuboushek's denial of her request for a promotion involves an administrative or personnel matter.¹¹ However, coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹² Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.

Mr. Kuboushek stated that initially appellant was not qualified for the GS-6 grade level although she had worked in the accounting technician position for four years. He stated that appellant was not accomplishing the full scope of the job at the GS-5 level. Mr. Kuboushek noted that appellant continually prepared travel orders for the staff without proper authorization. He explained that appellant had little office work experience when he first hired her at the GS-3 level and that, contrary to appellant's belief, she was not performing actual accounting work. He noted that when Ms. Wilson took over appellant's position, she was credited with cleaning up the travel issues and received compliments from the staff about her job performance. He offered appellant assistance with her work and had other staff members assist her. He recognized appellant on special occasions such as, secretaries' week, Valentine's Day and her wedding and even recommended her for a performance award in the amount of \$750.00. There is no evidence in the record of error or abuse committed by the employing establishment in handling appellant's request for a promotion. Thus, appellant has failed to establish a compensable factor of employment under the Act.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,¹³ 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) submit relevant and pertinent new evidence not previously considered by the Office.¹⁴ To be entitled to a merit review of an Office decision

⁹ See *Joel Parker, Sr.*, 43 ECAB 220 (1991) (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁰ See *Curtis Hall*, 45 ECAB 316 (1994).

¹¹ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

¹² See *Richard J. Dube*, 42 ECAB 916 (1991).

¹³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(1)-(2).

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.¹⁵ 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 of the merits.

ANALYSIS -- ISSUE 2

In support of her request for reconsideration, appellant submitted duplicate copies of her March 16, 2003 complaint report, undated letter to Dr. Mebane, April 4, 2003 occupational disease checklist and December 13, 2000 and May 2, 2003 memoranda, the March 17, 24 and 28, 2003 disability certificates of Dr. Stieglitz and Ms. Miller and Mr. Goldberg's April 8, 2003 letter, which were already of record prior to the Office's March 1, 2004 decision denying her request for a merit review. She also submitted evidence that was of a repetitious nature, consisting of her December 27, 2000 memorandum alleging that she was verbally abused by Mr. Kuboushek, her March 31, 2003 memorandum noting her inability to work with Ms. Dowling and her December 17, 2003 letter describing her emotional breakdown in the human resources office, and Ms. Dye's December 19, 2003 narrative statement regarding this breakdown and the emergency medical treatment appellant received. The Board has held, however, that 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.¹⁶

Appellant's handwritten note concerning a meeting she had with Dr. Stieglitz and correspondence between herself and Ms. Miller regarding the filing of an occupational disease claim is not relevant to the critical issue in this case, which is whether appellant has established an emotional condition due to a compensable factor of her employment.

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition while in the performance of duty. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁵ *Id.* at § 10.607(a).

¹⁶ See *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2004 and December 9, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member