

reconsideration.² By decision dated March 26, 2001, the Board affirmed a March 26, 1999 Office decision that also denied a request for reconsideration. The last merit decision in this case is a March 24, 1998 Office decision that denied appellant's claim for an emotional condition on the grounds that she failed to establish any compensable factors of employment.

On May 9, 2003 appellant requested reconsideration and submitted additional evidence.

In support of her request for reconsideration, appellant submitted a medical report. In a report dated October 4, 2001, Dr. Edward L. Herman, a psychiatrist, opined that appellant developed depression and an anxiety disorder because she was unable to handle her job physically or emotionally and because she became a caretaker for her mother who had severe dementia.

By decision dated May 30, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and of no evidentiary value and was therefore insufficient to warrant further merit review. The Office noted that appellant's claim had been denied in its March 24, 1998 decision because she had failed to establish that her emotional condition was causally related to any compensable factors of employment.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts on review, may end, decrease, or increase the compensation previously awarded; or award compensation previously refused or discontinued.³

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵

² On June 19, 1997 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging that she suffered from stress, anxiety and depression as a result of her federal employment. The Office denied appellant's claim on March 24, 1998 on the grounds that she failed to establish any compensable factors of employment.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

ANALYSIS

In support of her May 9, 2003 request for reconsideration, appellant submitted a medical report. However, in its last merit decision dated March 24, 1998, the Office denied appellant's claim for an emotional condition on the grounds that she failed to establish that her condition was causally related to compensable factors of employment. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence of record.⁷ Unless appellant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.⁸ In this case, because appellant has failed to establish a compensable factor of employment, the medical report she submitted does not constitute relevant and pertinent evidence not previously considered by the Office.

CONCLUSION

As 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 submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

⁶ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁷ *Id.*

⁸ *Garry M. Carlo*, 47 ECAB 299 (1996); *Margaret S. Krzycki*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 30, 2003 is affirmed.

Issued: December 1, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member