

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**SHIRLEY RHYNES, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Memphis, TN, Employer**

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**Docket No. 04-1299  
Issued: September 9, 2004**

*Appearances:*  
*John R. Hershberger, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On April 19, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated January 13, 2004 which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's January 8, 2003 decision which denied her claim that she sustained an employment-related emotional condition. Because more than one year has elapsed between the last merit decision and the filing of this appeal on April 19, 2004, the Board lacks jurisdiction to review the merits of this claim.<sup>1</sup>

**ISSUE**

The issue is whether 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).

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<sup>1</sup> 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). Appellant submitted additional evidence after the Office's January 13, 2004 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On March 22, 2002 appellant, then a 44-year-old mailing standards specialist supervisor, filed a claim alleging that she sustained an emotional condition due to various incidents and conditions at work, including harassment by James Roger, a supervisor. By decision dated January 8, 2003, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors. In a letter dated January 17, 2003, appellant suggested that the Office, in its January 8, 2003 decision, mischaracterized an internal investigation report produced by the employing establishment. She also requested a complete copy of her file.

By letter dated December 10, 2003, Jeffery L. Atchley, Esq., indicated that he was filing a reconsideration request on behalf of appellant. Mr. Atchley argued that the witness statements of record showed that Mr. Rogers harassed appellant and that the medical evidence supported a causal relationship between this harassment and her emotional condition. In conjunction with his letter, Mr. Atchley submitted a February 11, 2002 email transmission in which appellant advised Mr. Rogers that she was not refusing a direct order; an October 2, 2002 witness statement of Brenda A. Williford, a coworker; a March 19, 2002 report of Dr. Antoine Jean-Pierre, an attending Board-certified psychiatrist; and a May 16, 2002 report of Dr. Robert Buchalter, an attending Board-certified psychiatrist, with two undated supplemental statements of Dr. Buchalter which had been requested by the Office. Each of these documents had previously been submitted to the Office.

By decision dated January 13, 2004, the Office denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a). The Office indicated that Mr. Atchley was not authorized as appellant's representative and therefore could not file a valid reconsideration request on behalf of appellant. The Office also noted that the documents submitted by Mr. Atchley had previously been submitted to the Office.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.<sup>4</sup> 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 on the merits.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.* 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).

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

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> 20 C.F.R. § 10.608(b).

Office regulations provide that a claimant or a representative may file an application for reconsideration of an adverse Office decision and that the application must be in writing.<sup>6</sup> Office regulations further provide that a claimant's appointment of a representative must be in writing and that a properly appointed representative may make a request or give directions to the Office regarding the claims process.<sup>7</sup> The Board has held that a representative must be authorized by a claimant in writing in order to file a valid reconsideration request on her behalf.<sup>8</sup>

### ANALYSIS

In the present case, the Office issued a January 8, 2003 decision in which it denied appellant's claim that she sustained an employment-related emotional condition on the grounds that she did not establish any compensable employment factors. By decision dated January 13, 2004, the Office refused to reopen appellant's case for further review of the merits of her claim. By letter dated December 10, 2003, Mr. Atchley indicated that he was filing a reconsideration request on behalf of appellant. Mr. Atchley submitted several documents in conjunction with his letter. However, there is no evidence of record that Mr. Atchley was appellant's properly appointed representative at the time the December 10, 2003 letter was sent. Therefore, he did not file a valid reconsideration request on behalf of appellant.<sup>9</sup>

In a letter dated January 17, 2003, appellant suggested that the Office mischaracterized certain evidence in its January 8, 2003 decision and requested that the Office send her a complete copy of her file. However, she did not request reconsideration of her claim in this or any other document of record. Because no valid reconsideration request was filed in the present case by appellant or by a properly appointed representative on behalf of appellant, the Office properly refused to reopen appellant's case for further review of the merits of her claim.<sup>10</sup>

### CONCLUSION

The Board 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).

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<sup>6</sup> 20 C.F.R. §§ 10.605, 10.606(b)(1). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2a (January 2004).

<sup>7</sup> 20 C.F.R. § 10.700(a), (c). The Board has specifically acknowledged that a properly appointed representative may file a reconsideration request on behalf of a claimant. *See David M. Ibarra*, 48 ECAB 218, 219 (1996).

<sup>8</sup> *See id.* at 219-20. The Board has further held that there is no requirement that the Office actually have the authorization in hand at the time an authorized representative acts on behalf of a claimant, but the representative only needs to show he was authorized at the time such action was undertaken. *See Ira D. Gray*, 45 ECAB 445, 447 (1994).

<sup>9</sup> *See supra* notes 6 through 8 and accompanying text.

<sup>10</sup> The Board notes that, had Mr. Atchley filed a valid reconsideration request on behalf of appellant, the documents he submitted would not be sufficient to reopen appellant's claim for merit review in that they had previously been submitted to the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member