

generalized anxiety disorder. The employing establishment controverted the claim, and submitted meeting notes and statements from Jose D. Diaz, postmaster, dating from January 25 to November 6, 2000.

By letter dated January 3, 2001, the Office asked that the employing establishment respond to appellant's claim. In a letter dated January 4, 2001, the Office informed appellant that the evidence submitted was insufficient to establish her claim and advised her regarding the factual and medical evidence needed to establish her claim. In response, appellant submitted additional documentary and medical evidence. Mr. Diaz provided a statement dated January 24, 2001 in which he responded to appellant's allegations.

By decision dated September 20, 2001, the Office denied the claim finding that, as appellant failed to establish a compensable factor of employment, she did not establish that she sustained an injury in the performance of duty.

By letter dated September 29, 2001, appellant requested a hearing and submitted a disability slip dated September 24, 2001 in which Dr. Alva advised that appellant could not work. At the hearing, held on February 25, 2002, appellant was represented by union representatives and testified regarding perceived errors in the prior Office decision and also regarding accepted 1993 and 2000 cervical injuries. Appellant also submitted additional evidence previously of record. Both appellant and the employing establishment submitted comments following the hearing.

In a decision dated May 14, 2002, an Office hearing representative discussed appellant's testimony and affirmed the prior decision. He specifically noted that, although evidence was submitted regarding an Equal Employment Opportunity (EEO) claim, a finding had not been made in that regard, and also noted that appellant's physicians advised that her emotional condition was in part caused by pain from her orthopedic conditions.

On May 14, 2003 appellant, through her attorney, requested reconsideration contending that she had established compensable factors of employment. Appellant submitted a report dated May 7, 2003 in which Dr. Alva reiterated his previous diagnoses of major depressive disorder and generalized anxiety disorder as well as myofascial pain syndrome. He opined that appellant's psychological symptoms were caused by occupational stressors as well as chronic pain from her previous injuries. Appellant specifically contended that Dr. Alva's opinion that her depression was due in part to pain from previous employment injuries, working outside her physical limitations, a 12-week delay in processing her claim, and other administrative factors demonstrated error and abuse and were thus compensable; therefore, the medical evidence should be addressed.

By decision dated April 19, 2004, the Office denied appellant's reconsideration request. The Office noted that appellant's contentions regarding the compensable factors of employment had been previously addressed and thus found them repetitious, immaterial and irrelevant. The Office further informed appellant that, regarding her allegation that pain from her accepted

conditions caused her depression, she retained the right to file a claim for a consequential injury under both file number 13-1214146 or file number 13-972228.¹

LEGAL PRECEDENT

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).² 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.³ 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.⁴

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated July 29, 2003 denying appellant's request for reconsideration. Because more than one year had elapsed between the dates of the Office's most recent merit decision dated May 14, 2002 and the filing of her appeal with the Board on April 19, 2004, the Board lacks jurisdiction to review the merits of her claim.⁵

In her April 19, 2004 reconsideration request, appellant contended that her emotional condition was caused by working outside her physical limitations, a 12-week delay in processing her claim and other administrative factors which demonstrated error and abuse and were thus compensable; as such, the medical evidence should be addressed. Appellant, however, had previously made these contentions in previous statements and at the hearing.

The Board has held that the submission of evidence argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case,⁶ and these contentions were discussed in both previous Office decisions. Appellant therefore did not show

¹ The record also contains a decision dated February 28, 2003 in which the Office approved fee requests of \$436.15, \$1,197.00 and \$585.75. These had been agreed upon by appellant, and she did not file an appeal with the Board regarding this decision.

² 20 C.F.R. § 10.608(a).

³ 20 C.F.R. § 10.608(b)(1) and (2).

⁴ 20 C.F.R. § 10.608(b).

⁵ 20 C.F.R. § 501.3(d)(2).

⁶ *Edward W. Malaniak*, 51 ECAB 279 (2000).

that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.⁷

Regarding appellant's contention that her emotional condition was due in part to the pain generated by her cervical injuries, the Board notes that the Office advised her that any claim for back pain could be adjudicated under her orthopedic claims, file numbers 13-1214146 and 13-972228.

The underlying issue in the instant case was whether appellant had established either an incident occurring in the performance of her duties or abuse or harassment by her supervisors. Medical evidence is not relevant to those issues. Thus, as appellant failed to establish a compensable employment factor, the medical evidence need not be addressed.⁸

The Board therefore finds that appellant did not submit new and relevant evidence with her reconsideration request but merely reiterated allegations that had been previously considered by the Office. Her May 14, 2003 reconsideration request, therefore, does not show that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office.⁹ The Board finds that the Office properly determined that this evidence did not constitute a basis for reopening the case for further merit review.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for merit review on July 29, 2003.

⁷ *Supra* note 3.

⁸ *Roger Williams*, 52 ECAB 468 (2001); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2003 be affirmed.

Issued: September 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member