

and first attributed her condition to her employment on that date. Appellant indicated that her condition was the result of a prolonged effect of a hostile environment, discrimination, and a lack of promotions. She stated that on June 22, 2001 her second line supervisor removed her from her office space, which disrupted her daily routine, her environment, her telephone access and proximity to amicable coworkers. Appellant alleged that these disruptions caused her blood pressure to rise. She also experienced stress as she was an agent for a class action and expected to respond to interrogatories. Appellant submitted medical evidence diagnosing acute and post-traumatic stress.

The Office requested additional factual and medical evidence from appellant on August 16, 2001. Appellant submitted medical evidence as well as Equal Employment Opportunity (EEO) Commission complaints alleging failure to provide adequate accommodations and retaliation for prior complaints and her status as a class agent. She also submitted documents relating to the class action filed against the employing establishment by “all African-American, nonsupervisory employees and former employees of the [employing establishment] who could have been denied career advancement to one or more white collar position....” Appellant submitted statements and emails from Tanya Ward Jordan, vice president of the employing establishment chapter of Blacks in Government, protesting appellant’s treatment and office move. She submitted a decision from the EEO Commission dated July 31, 1991 finding that appellant established discrimination by the employing establishment and recommending removal of a marginal performance appraisal, with retroactive promotion. Appellant submitted a motion for a temporary restraining order preventing the employing establishment from removing her from her office.

The Office denied appellant’s claim on March 26, 2002 finding that she failed to substantiate a compensable factor of employment. Appellant requested an oral hearing on April 7, 2002 and submitted additional medical evidence. She testified at the oral hearing on November 25, 2002 and stated that the basis for her claim was the lack of accommodations by the employing establishment on June 22, 2001. Appellant stated that she required sunlight, and an open place away from the door in order to work without her blood pressure escalating. Appellant alleged that when she was moved to another office 4620, it was toxic to her health as it was dark and she was close to the door. In order to cope, she began working in the library. The employing establishment accommodated appellant’s work space need two weeks before the hearing by placing her in a private office with a window away from the door.

By decision dated May 2, 2003, the hearing representative denied appellant’s claim, finding that she had not established a compensable factor of employment with respect to the events of June 22, 2001 when the employing establishment moved appellant from her office.

Appellant’s attorney requested a second oral hearing on May 30, 2003. The Branch of Hearings and Review denied the request by decision dated July 10, 2003.

On April 27, 2004 appellant’s attorney requested reconsideration and disagreed with the hearing representative’s decision regarding whether the office relocation was in error. He alleged that he was submitting papers demonstrating that the relocation constituted disability discrimination because it failed to accommodate her medical condition. Counsel also stated that he was enclosing a response to the employing establishment’s motion for summary judgment in

the EEO Commission case based upon the June 26, 2001 office relocation and asked that the Office's decision be held in abeyance until a decision was issued in that case. The record does not contain any such accompanying documents.

By decision dated July 28, 2004, the Office denied reconsideration finding that she failed to raise substantive legal questions nor include new and relevant evidence with her request for reconsideration. The Office noted that the request for reconsideration did not include the supporting documentation listed by her attorney.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ 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.² 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.³

ANALYSIS

Appellant, through her attorney requested reconsideration on April 27, 2004 of the hearing representative's May 2, 2003 decision. He stated that he was submitting additional relevant new evidence regarding the implicated employment factor, appellant's office relocation. However, the record on appeal does not contain any evidence submitted in connection with the reconsideration request, or any documents similar to those described by appellant's attorney. As the reconsideration request did not include relevant legal argument or relevant and pertinent new evidence, the Office properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's reconsideration request.

¹ 5 U.S.C. §§ 8101-8193, § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member