

condition on February 28, 2002. She stopped work on March 4, 2003 and returned on March 31, 2003.

By letter dated June 24, 2003, the Office asked appellant to submit additional information, including a comprehensive medical report from her treating physician addressing how the specific work factors or incidents identified by her had contributed to her claimed emotional condition. The Office specifically requested a detailed statement from appellant addressing the employment-related conditions or incidents contributed to her condition.

Appellant submitted a prescription note from Dr. Amita Patel, Board-certified in psychiatry and neurology, dated March 14, 2003, who advised that appellant would be off work until March 31, 2003. In an attending physician's report dated May 7, 2003, Dr. Patel noted that on February 28, 2003 appellant experienced an altercation at work causing her to become very anxious, tearful and depressed. She diagnosed post-traumatic stress disorder and advised that appellant would be disabled from March 14 to 24, 2003. Also submitted was an attending physician's report dated July 3, 2003 prepared by a therapist, who noted that appellant was assaulted by a police officer at the employing establishment and diagnosed adjustment disorder with mixed anxiety and depressed mood. She advised that the incident occurred at the employing establishment and that appellant was hospitalized from March 18 to 24, 2003.

In a decision dated July 29, 2003, the Office denied appellant's claim as the evidence was not sufficient to establish that the incident occurred on February 28, 2002 as alleged.

On June 15, 2004 appellant requested reconsideration and submitted additional evidence. A hospital admission form from Miami Valley Hospital noted that appellant was admitted by Dr. Patel on March 13, 2003 for depression and anxiety. He noted a history of appellant's condition advising that appellant had an altercation at work with a security officer over a handicapped parking space and appellant reported that she was physically and verbally assaulted and as a result was anxious, tearful, paranoid and unable to work. Dr. Patel diagnosed post-traumatic stress disorder, paranoia, headaches, failure to sleep, thyroid problems and a traumatic event at the place of employment. The therapist reported on the diagnostic summary that approximately two weeks prior to admission on March 13, 2003, appellant had an altercation with a police officer over parking in a handicap parking space and advised that she and her daughter were verbally and physically assaulted. The psychiatric assessment prepared by Aleda Maxwell, a registered nurse, noted that appellant had an altercation with an employing establishment police officer over a handicap parking space and was verbally and physically assaulted and developed anxiety and depression. Other treatment notes from Advanced Therapeutics dated May 8, 2003 to June 21, 2004, noted that appellant experienced stress after an incident with a Veterans Administration police officer when she parked in a handicap space and the police officer slammed the car door on her daughter-in-laws arm. Appellant reported that she apologized to the officer for parking in the wrong space. She reported the officer to the employing establishment security office and he followed her into the building, grabbed her purse and verbally assaulted her. Also submitted was an attending physician's report from Dr. Isaac Corney, a Board-certified family practitioner, dated July 17, 2003, who noted that on February 28, 2003 appellant was involved in an altercation with a Veterans Administration police officer and diagnosed post-traumatic stress disorder and adjustment disorder. In a report dated December 1, 2003, Dr. Corney advised that on March 5, 2003 appellant presented with

complaints of stress and reported having an altercation with a Veterans Administration police officer while at work. Dr. Corney diagnosed acute adjustment disorder and post-traumatic stress disorder. He opined that the diagnosed conditions of acute adjustment disorder and post-traumatic stress disorder were directly caused by the altercation with the Veterans Administration officer while at work.

In a decision dated June 28, 2004, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was irrelevant and insufficient to warrant review of the merit decision dated July 29, 2003.

In a decision dated July 13, 2004, the Office vacated the June 28, 2004 decision noting that the decision was sent to an incorrect address. The Office advised that the evidence received since the July 29, 2003 decision was reviewed and incorporated as part of the current decision. The Office denied appellant's reconsideration request on the grounds that the evidence submitted was irrelevant and immaterial in nature and insufficient to warrant review of the prior decision.

In a letter dated November 24, 2004, appellant through her attorney requested reconsideration. Appellant noted that she was submitting new evidence; however, no additional medical evidence was presented with the reconsideration request.

In a decision dated December 28, 2004, the Office denied appellant's reconsideration request on the grounds that appellant neither raised substantive legal questions nor included new or relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.¹ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

The Office's July 13, 2004 decision, denied appellant's reconsideration request, without conducting a merit review, on the grounds that the evidence submitted neither raised substantive

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

However, with her June 15, 2004 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by the Office. After the July 29, 2003 decision, which denied appellant's claim because she had not established that the February 28, 2003⁴ employment incident occurred as alleged, appellant submitted an attending physician's report from Dr. Corney dated July 17, 2003, who noted that on February 28, 2003 appellant was involved in an altercation with a Veterans Administration police officer. Also submitted was a report dated December 1, 2003, where Dr. Corney advised that appellant presented on March 5, 2003 with complaints of stress and reported having an altercation with a Veterans Administration police officer while at work. This particular evidence is relevant as the factual recitation in the reports addresses the underlying point at issue of whether appellant established a compensable employment factor on February 28, 2003. This is especially important because the Office in its decision dated July 29, 2003 denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the events occurred as alleged in February 2003.

Additionally, appellant submitted hospital admission records from Miami Valley Hospital dated March 24, 2003, which noted that appellant was admitted by Dr. Patel on March 13, 2003 after an altercation at work with a security officer over handicapped parking. Also submitted was a diagnostic summary which noted that approximately two weeks prior to admission on March 13, 2003 appellant had an altercation with a police officer over parking in a handicap parking space and advised that she and her daughter was verbally and physically assaulted. The psychiatric assessment prepared by Aleda Maxwell, a registered nurse, noted a history that appellant had an altercation with an employing establishment police office over a handicap parking space. Other treatment notes from Advanced Therapeutics dated May 8, 2003 to June 21, 2004, noted that appellant reported an altercation with a Veterans Administration police officer after parking in a handicap space. This evidence is also relevant as it that the claimed incident of February 28, 2003 occurred as alleged. While this evidence may be of limited probative value, the Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁵ The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), the new evidence submitted by appellant was sufficient to require reopening of her claim for further review on its merits.

Therefore, the Office in its decision dated July 13, 2004 improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. Consequently, the case must be remanded for the Office to reopen appellant's claim for a merit review. Following this

⁴ Although the CA-2 form filed by appellant noted February 28, 2002 as the date appellant became aware of her condition, this appears to be a typographical error, as appellant's statements to the medical providers and the medical evidence submitted in support of her claim consistently refers to the date of incident of February 28, 2003.

⁵ See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.⁶

CONCLUSION

The Board finds that the Office, in its decision dated July 13, 2004, improperly denied appellant's request for reconsideration of her case on its merits.⁷

ORDER

IT IS HEREBY ORDERED THAT the December 28 and July 13, 2004 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to the Office for further development in accordance with this decision.

Issued: August 2, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁶ 20 C.F.R. § 10.606(b)(2)(i) and (ii) (1999), *see also Claudio Vazquez*, 52 ECAB 496 (2001).

⁷ The Board finds that it is unnecessary to address whether the Office properly denied appellant's request for reconsideration on November 24, 2004 in view of the Board's disposition of the first issue.