



factors of her federal employment.<sup>1</sup> In a decision dated November 18, 1999, the Office denied appellant's request for reconsideration on the grounds that she failed to submit any new evidence or raise any new legal arguments. In decisions dated January 31 and May 30, 2000, the Office denied modification of its prior decisions. In a decision dated January 25, 2002, the Board found that the Office failed to properly develop appellant's allegations of harassment, sexual discrimination and religious discrimination. The Board remanded the case to the Office for further development. The factual history of the cases is set forth in the January 25, 2002 decision and incorporated herein by reference.<sup>2</sup>

Following remand, the Office received the employing establishment's response to appellant's allegations. By decision dated June 10, 2002, the Office denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between the accepted employment factor and her condition. The Office found that the comments made by Mr. Grenier and Mr. Schelling were discriminatory in nature and accepted verbal abuse as a compensable factor of employment. The Office found the remaining allegations to be unsubstantiated by the evidence of record.

Appellant requested reconsideration by letter dated July 3, 2002 and submitted factual and medical evidence in support of her request.

By decision dated December 9, 2002, the Office denied modification of the June 10, 2002 decision. The Office found the medical evidence submitted insufficient to establish that the psychiatric condition was causally related to the accepted employment incidents.

Subsequent to the issuance of the December 9, 2002 decision, the Office received progress reports dated November 20, 2002 and January 16, February 6 and March 12 and 26, 2003 by Dabney Blankenship, Ph.D., a clinical psychologist, and reports dated January 27, February 3 and 25, 2003 by Dr. Steve A. Moskowitz, a Board-certified internist.

On April 9, 2003 appellant requested reconsideration and submitted a March 17, 2003 report by Dr. Moskowitz.

On May 9, 2003 the Office denied modification of the December 9, 2002 decision.

In a letter dated January 13, 2004, appellant requested reconsideration.

In a May 22, 2003 progress report, Dr. Blankenship diagnosed generalized anxiety and major depression.<sup>3</sup> He related that appellant reported an increase in her anxiety when she

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<sup>1</sup> Appellant, an account technician, contended her stress was due to harassment by Henry Grenier, her supervisor, demeaning statements made by him and being forced to work under his supervision. Appellant submitted an August 6, 1997 Equal Employment Opportunity claim in which she alleged discrimination based upon race, sex, religion, mental disability, age and reprisal. Appellant stopped work on June 26, 1997 and has not returned.

<sup>2</sup> Docket No. 00-2156 (issued January 25, 2002).

<sup>3</sup> On the form Dr. Blankenship noted appellant's employer as Boeing Company.

thought of returning to work and that her appetite was up and down. Appellant related she experienced shortness of breath and heart racing when she recalls her fear of the workplace.

On January 22, 2004 the Office received a December 22, 2003 attending physician's report by Dr. Harry G. Lewis, a treating Board-certified psychiatrist, who diagnosed recurrent major depression and checked "yes" that the condition was employment related. In support of his opinion, the physician noted her condition had stabilized in 1993 and that her treatment at work in 1997 contributed to her major depression. Under remarks, Dr. Lewis related appellant "was again taken off of work because of depression due to her treatment at work on [November] 6, [20]02." He noted appellant had been hospitalized on January 29, 1999 due to condition.

In a nonmerit decision dated April 14, 2004, the Office denied appellant's request for reconsideration.

In a letter dated May 4, 2004, appellant requested reconsideration and submitted the May 4, 2004 statements by Benzena Battle, her daughter, and Damue Bagwell, her son, regarding her condition in 1997.

In a nonmerit decision dated June 17, 2004, the Office denied appellant's request for reconsideration.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>4</sup> section 10.606(b)(2) of the implementing federal regulation provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> 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.<sup>6</sup> Evidence or argument that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

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<sup>4</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>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b).

<sup>7</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>8</sup> *Kevin M. Fatzner*, 51 ECAB 407 (2000).

## ANALYSIS

Appellant's claim was denied by the Office because she did not submit sufficient rationalized medical evidence to establish that her emotional condition was caused or aggravated by the accepted factor, the verbal abuse by Mr. Grenier and Mr. Schelling. Subsequent to the May 9, 2003 merit decision, the Office received a progress report by Dr. Blankenship and an attending physician's report by Dr. Lewis. In the May 22, 2003 progress report, Dr. Blankenship generalized anxiety and major depression. He related that appellant reported an increase in anxiety at the thought of returning to work and that her appetite was up and down. Dr. Blankenship noted that appellant experienced shortness of breath and a racing heart when she recalled her fear of the workplace. The Board finds that Dr. Blankenship's report is irrelevant to the issue at hand as he fails to provide an opinion relating appellant's condition to the accepted employment factor. The opinion of Dr. Lewis is similarly irrelevant to the issue of whether appellant's condition is causally related to the accepted employment factor. Dr. Lewis diagnosed a major depression which he attributed generally to her treatment at work in 1997 and 2002. Dr. Lewis, however, did not relate appellant's condition to the accepted employment factor. He failed to provide an opinion establishing that her condition was caused or aggravated by the verbal abuse accepted by the Office. The issue in the case is causal relationship. The additional medical evidence, although new, is not pertinent to the issue of causal relationship because it did not address how appellant's accepted employment factor caused or aggravated her major depression. Consequently, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).

On May 4, 2004 appellant requested reconsideration and submitted statements dated May 4, 2004 by her children, Ms. Battle and Mr. Bagwell. Appellant's January 22, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Appellant also did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirement under section 10.606(b)(2). With regard to the third element, appellant submitted statements by her children in support of her request. As noted, appellant's claim was denied because the medical evidence did not establish that her depression was causally related to the accepted employment factor. The statements by her children submitted by appellant in support of her reconsideration request are not relevant to the issue of causal relationship, which is medical in nature. Therefore, their statements do not constitute pertinent and relevant evidence not previously considered by the Office. The Office properly denied further merit review of her claim.

## CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) on the grounds that appellant did 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 or submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits in its April 14 and June 17, 2004 nonmerit decisions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 17 and April 14, 2004 are affirmed.

Issued: February 22, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member