

FACTUAL HISTORY

On February 25, 2002 appellant, then a 38-year-old health communications specialist, filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused an emotional condition. In support of her claim, she submitted medical and factual evidence. By letters dated March 22, 2002, the Office explicitly informed appellant of the type evidence needed to support her claim and requested that the employing establishment respond to her allegations. In response, appellant submitted additional factual and medical evidence and the employing establishment provided a number of statements contradicting appellant's contentions.

By decision dated September 26, 2002, the Office denied the claim, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty. On October 24, 2002 appellant, through her attorney, requested a hearing, which was held on May 29, 2003. At the hearing, appellant submitted a May 14, 2003 report in which Dr. A. Benjamin Eubanks, a psychiatrist, and F.G. Pete Hutchins, III, Ed.D. reported appellant's history of injury and their treatment beginning in August 2000. They diagnosed severe depression, specific phobia, persecutory ideation, obsessive-compulsive disorder, panic disorder, post-traumatic stress disorder and personality disorder and opined that these were caused by a hostile work environment for five years and the fact that appellant was discriminated against because of her race, as evidenced by various patterns of exclusion and verbal attacks. They advised that she was unable to perform her work duties. Subsequent to the hearing, appellant submitted copious factual and medical evidence. By decision dated October 21, 2003, an Office hearing representative affirmed the prior decision as modified, finding that she established as compensable that from March 24 to 26, 1999 she and other workers were required to put together approximately 80 two-inch binders in a short turn-around time with inadequate instruction given. The hearing representative, however, found that the medical evidence of record did not support that her condition was caused by the accepted employment factor.

On October 15, 2004 appellant, through her attorney, requested reconsideration, arguing that the medical evidence of record established causation and resubmitted the May 14, 2003 medical report. By decision dated November 9, 2004, the Office denied appellant's reconsideration request, finding that she submitted no new legal contentions or new evidence, noting that the May 14, 2003 report had previously been considered.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.² 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).³ This section provides that the

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(a).

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.⁴ 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.⁵

ANALYSIS

The only decision before the Board in this appeal is the decision of the Office dated November 9, 2004 denying appellant's application for review. Because more than one year had elapsed between the date of the Office's most recent merit decision dated October 21, 2003, and the filing of her appeal with the Board on February 11, 2005, the Board lacks jurisdiction to review the merits of her claim.⁶

Appellant argued on reconsideration that the medical evidence of record, particularly the May 14, 2003 medical report, established causation. In the decision dated October 21, 2003, the hearing representative reviewed the medical evidence of record and found that it did not establish that appellant's emotional condition was caused by the one compensable factor of employment. The Board finds that there is no evidence that he erroneously applied or interpreted a specific point of law in rendering his decision, and appellant's contentions on reconsideration do not constitute a new argument. Consequently, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁷

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant resubmitted the May 14, 2003 medical report from Drs. Eubanks and Hutchings, this report was previously reviewed by the Office hearing representative and is therefore duplicative. The Board has long held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸ Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.

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).

⁴ 20 C.F.R. § 10.608(b)(1) and (2).

⁵ 20 C.F.R. § 10.608(b).

⁶ 20 C.F.R. § 501.3(d)(2).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *James A. Castagno*, 53 ECAB 782 (2002); *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2004 be affirmed.

Issued: November 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board