



condition as a result of his federal employment. Appellant alleged that his supervisor required him to work overtime in contravention of his medical restrictions.

By decision dated March 24, 2003, the Office denied the claim, finding that appellant had not substantiated compensable work factors with respect to his claim. Appellant requested a hearing before an Office hearing representative, which was held on November 9, 2003. By decision dated February 9, 2004, the hearing representative affirmed the March 24, 2003 decision. In a decision dated May 18, 2004, the Office reviewed the case on its merits and denied modification.

In a letter dated August 18, 2004, appellant requested reconsideration of his claim. Appellant argued that the Office did not properly consider the medical evidence, or properly review his case. He argued that the employing establishment had committed error or abuse, and he submitted an arbitration decision dated April 29, 1991 with respect to a union grievance that the inability to work overtime does not constitute light duty.

In a decision dated October 1, 2004, the Office determined that appellant's request for reconsideration was not sufficient to warrant merit review of the claim. Appellant again requested reconsideration by letter dated May 13, 2005. He stated that he was submitting a witness statement from a coworker, Carl Anderson, to show that a supervisor, Mr. Johnson, acted unreasonably on February 14, 2003. In a May 10, 2004 statement, Mr. Anderson reported that appellant told Mr. Johnson that he was not on the overtime list and had medical restrictions, but Mr. Johnson did not care. Mr. Anderson stated that, since appellant left, almost half of the employees had written to the postmaster regarding Mr. Johnson's intimidating style of managing.

By decision dated June 1, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”<sup>1</sup>

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b)

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<sup>1</sup> 5 U.S.C. § 8128(a).

provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. 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.<sup>2</sup>

### ANALYSIS

In this case, there are two nonmerit decisions before the Board: the October 1, 2004 decision, which reviewed the August 18, 2004 reconsideration request and the accompanying evidence; and the June 1, 2005 decision, which reviewed the May 13, 2005 reconsideration request and supporting evidence. The issue before the Board is not whether appellant has established his claim, but whether he met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring the Office to reopen his claim for merit review.

With respect to the August 18, 2004 reconsideration request, appellant raised the argument that the Office did not properly consider the medical evidence. It is well established that, in an emotional condition claim, appellant must first establish a compensable work factor before the medical evidence is considered.<sup>3</sup> Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. He submitted an April 29, 1991 arbitration decision regarding light duty, but this does not constitute new and relevant evidence. Appellant had previously submitted a 1998 decision from a dispute resolution team that the inability to work overtime was not a “light-duty” status. To the extent that appellant is claiming that there was error with respect to light duty in his case, he must submit new and relevant evidence on this issue. The 1991 arbitration decision is not new and relevant to a specific claim of error for administrative actions in this case.

With the May 13, 2005 reconsideration request appellant submitted a May 10, 2004 statement from a coworker, Carl Anderson. The statement does not constitute new and relevant evidence regarding a compensable work factor. Mr. Anderson confirmed that appellant had claimed he had medical restrictions and that the employing establishment wanted appellant to work overtime. This was not factually in dispute. The issue is whether there was error or abuse by the employing establishment that would constitute a compensable work factor. Mr. Anderson did not provide any new and relevant evidence with respect to a claim of error. He referred to employees writing letters to the postmaster regarding Mr. Johnson’s managing style, but this is not relevant to the specific allegation made by appellant. The Board finds that the May 13, 2005 reconsideration request did not show the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or provide relevant and pertinent new evidence not previously considered by the Office. The Board accordingly finds that the Office properly denied the reconsideration request without merit review of the claim.

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<sup>2</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>3</sup> *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that appellant's May 13, 2005 and August 18, 2004 reconsideration requests were insufficient to warrant review of the merits of the claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 1, 2005 and October 1, 2004 are affirmed.

Issued: November 8, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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