



depression. She also stated that she experienced labor management problems regarding the processing of her compensation claim and “other job-related problems, the subject of my pending [Equal Employment Opportunity] EEO Complaint” for which she had mediation in November 2003. She stated that in December 2001 she underwent a fitness-for-duty examination and was assessed with a high-risk restriction due to her psychiatric condition and was deemed not fit for duty. In a report dated March 31, 2003, Dr. Carlos Otero, a Board-certified neurologist, diagnosed mechanical low back pain syndrome, lumbosacral discogenic disease and major depression. In a September 26, 2004 report, Dr. Fabio H. Lugo, a psychiatrist, noted that he treated appellant in January 2002, diagnosed a mood disorder due to a medical condition and advised that appellant’s psychiatric symptoms were related to back pain.

By letter dated April 6, 2004, the Office informed appellant that, as she was alleging that her psychiatric condition was caused in part by her back pain, that aspect would not be addressed in the instant claim, file number 022050063. She was advised to file a recurrence claim for a consequential injury under file number 011017646. The Office stated that the present claim would address the other alleged employment factors and advised her of the evidence needed to support her claim. She was given 30 days in which to respond.

In a decision dated July 19, 2004, the Office denied the claim, finding that she did not establish a compensable factor of employment.

On August 21, 2004 appellant requested reconsideration. She advised the Office that she had submitted a CA-2a claim form as instructed and 92 pages of additional evidence. She also submitted additional medical evidence,<sup>1</sup> including a March 5, 2002 report in which Dr. Lugo noted he was treating appellant for a mood disorder due to a medical condition. In a May 17, 2002 report, Dr. Otero summarized appellant’s medical condition, noting orthopedic diagnoses and affective disorder. In a January 3, 2003 report, Dr. Ruben Rivera Carrion diagnosed major depression.<sup>2</sup>

By decision dated September 20, 2004, the Office denied appellant’s reconsideration request noting that the medical evidence did not address whether her condition arose in the performance of duty and, therefore, was irrelevant.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical

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<sup>1</sup> Appellant also submitted pay information and additional medical evidence regarding her back condition which are not relevant to the instant claim.

<sup>2</sup> Dr. Carrion’s credentials could not be ascertained, although appellant identified him as a psychiatrist.

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>4</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>5</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>6</sup> When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>7</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.<sup>9</sup> An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant generally alleged that she experienced labor management problems regarding the processing of her compensation claim for her back condition and had filed an EEO complaint regarding this and other employment-related issues. However, she did not respond to the Office's April 6, 2004 letter requesting that she provide further information about these allegations. Absent error or abuse, the handling of a workers' compensation claim is an administrative action not covered under the Act.<sup>11</sup> The mere fact that appellant filed an EEO

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<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>4</sup> 28 ECAB 125 (1976).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>7</sup> *Lillian Cutler*, *supra* note 4.

<sup>8</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>9</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>10</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>11</sup> See *Robert W. Johns*, 51 ECAB 137 (1999).

complaint does not substantiate that the employing establishment committed error or abuse.<sup>12</sup> Appellant did not submit sufficient evidence to substantiate any error or abuse in the processing of her workers' compensation claims or any other employing establishment action. Other than stating that she had filed a complaint and had arbitration, no evidence was submitted pertaining to her EEO claim. Appellant therefore has not established a compensable factor of employment. Where, as here, appellant did not establish a compensable employment factor, it is not necessary to consider the medical evidence.<sup>13</sup>

The Board notes that the Office did not adjudicate whether appellant's emotional condition was a consequence of her accepted back condition under this claim. Appellant stated in her reconsideration request that she had submitted a CA-2a claim form, as instructed by the Office, and had submitted additional evidence. As this matter is pending in claim number 022017646, it is not an issue on appeal in the present case.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 10.606(b)(2) of Office regulations 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) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>15</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>16</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>17</sup> Similarly, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

In her letter requesting reconsideration, appellant merely stated that she had submitted a CA-2a on her back claim and submitted additional medical evidence. She therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office pertaining to her

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<sup>12</sup> See *Michael A. Salvato*, 53 ECAB 666 (2002).

<sup>13</sup> See *Kathleen A. Donati*, 54 ECAB 759 (2003).

<sup>14</sup> As this matter is in an interlocutory position before the Office, it is not before the Board. See 20 C.F.R. § 501.2(c).

<sup>15</sup> 20 C.F.R. § 10.606(b)(2).

<sup>16</sup> 20 C.F.R. § 10.608(b).

<sup>17</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>18</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

emotional condition. Consequently, appellant is 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).<sup>19</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant submitted additional medical evidence, the underlying issue in this case is whether appellant has established any compensable factors of employment. She submitted no additional evidence regarding this issue with her reconsideration request. The additional medical evidence is not relevant to this issue. Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request.<sup>20</sup>

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment. The Board further 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).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 20 and July 19, 2004 be affirmed.

Issued: February 2, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> 20 C.F.R. § 10.606(b)(2).

<sup>20</sup> *Mark H. Dever*, 53 ECAB 710 (2002).