



Office assigned it File No. 022048175. In a witness statement, Gerard F. Earle stated that appellant “was crying and stressed from [management] orders.”

In a January 7, 2004 memorandum, Albert Sharib, manager, stated that on December 31, 2003 appellant “was given a predisciplinary interview for [f]ailure to [f]ollow [i]nstructions.” It was noted that appellant was not crying when she left the interview.

On January 9, 2004 appellant submitted disability slips dated December 31, 2003 and January 6, 2004 and a statement by Mr. Earle saying that he only witnessed appellant crying, but did not witness the circumstances leading up to her crying.

In a letter dated January 13, 2004, the Office informed appellant that the evidence of record was insufficient to support her emotional condition claim and advised her as to the type of medical and factual evidence to submit.

Subsequent to the Office’s January 13, 2004 letter, appellant submitted a December 31, 2003 treatment note by Dr. Jing Zhang, a treating Board-certified internist, a December 31 treatment note by Dr. N. Jayaram, a treating Board-certified orthopedic surgeon; psychiatric consult requests dated December 31, 2003 and January 8, 2004 by Dr. Zhang; disability notes dated December 31, 2003 and January 6, 2004; prescription slips dated January 15, 2004, and a February 18, 2004 note recommending further psychiatric treatment. She also submitted a January 15, 2004 work capacity evaluation form and January 15, 2005 report by Dr. Albert B. Siewers, a treating physician; two memorandum dated January 20, 2004 from Mr. Sharib; a January 27, 2004 statement from Jenny Shore regarding assisting her on December 30, 2003 and an April 11, 2002 modified job offer, which appellant accepted on April 17, 2002. In a January 13, 2004 witness statement, coworkers Edgar Gonzalez, Betty Serbert and Tenata Brown noted that they had seen appellant crying and upset on December 31, 2003. A January 28, 2004 Step 1 grievance and response placed appellant on standby time on December 12, 13 and 17, 2003. A January 20, 2004 Step 1 grievance regarding a December 30, 2003 incident alleged that Mr. Sharib referenced appellant’s sexual preferences. Other records submitted include a December 26, 2003 response from Mr. Sharib regarding appellant’s grievance; a December 26, 2003 statement by John Grillo regarding seeing mail left by a carrier on December 17, 2003; a December 31, 2003 statement by Sue Ayden noting that she saw appellant “hysterical crying and very upset about something;” and a January 19, 2003 statement by appellant regarding her being placed on standby on December 12, 13 and 17, 2003. On February 4, 2004 appellant alleged that the events of December 12, 13, 17 and 30, 2003 “are what led up to or partially led up to” the December 31, 2003 incident. She submitted additional statements dated February 4 and March 12, 2004, a March 1, 2004 claim for compensation; an email dated March 2, 2004 from Mr. Sharib; statements dated March 12 and April 1, 2004 by Mr. Grillo and a March 30, 2004 letter from Mr. Sharib.

By decision dated July 12, 2004, the Office denied appellant’s claim on the grounds that she failed to establish any compensable factors of employment.

On July 6, 2005 the Office received a June 27, 2005 request for reconsideration by appellant’s counsel and a December 15, 2004 report by Dr. Siewers and an undated statement by Gina Lanzo, a coworker.

Dr. Siewers diagnosed anxiety disorder, noting that appellant related that her supervisor began harassing her in October or November 2003 and had made inappropriate comments regarding her sexual orientation. He opined that appellant “experienced a significant episode of emotional and mental illness which made it impossible for her to work.” Dr. Siewers attributed appellant’s emotional condition to “harassment and the inappropriate sexual comments made by her manager” as the proximate cause of her disabling condition.

Ms. Lanzo related that Mr. Magnuson, her supervisor, asked appellant “if she would go out and do 1 hour street delivery on 24 route” on December 31, 2004. Ms. Lanzo stated that she observed appellant become upset over this request and asked Ms. Lanzo to get a shop steward.

On October 18, 2005 the Office received a time analysis form for the period September 15 to October 1, 2004 and a September 25, 2004 claim for a recurrence of disability beginning September 25, 2004 due to her December 8, 1999 employment injury in Office File No. 020773074.

In an October 18, 2005 nonmerit decision, the Office denied appellant’s request for reconsideration, finding that the evidence submitted was repetitious.<sup>1</sup>

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees’ Compensation Act<sup>2</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.<sup>3</sup>

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide 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>4</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim 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>5</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the

---

<sup>1</sup> The Board notes that the decision contains a typographical error when it informs appellant that she had one year from July 12, 2005 to request reconsideration. The last merit decision was July 12, 2004 not July 12, 2005.

<sup>2</sup> 5 U.S.C. § 8128(a) (“[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

<sup>3</sup> *Jeffrey M. Sagrecy*, 55 ECAB \_\_\_\_ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

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

<sup>5</sup> 20 C.F.R. § 10.608(b).

Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>6</sup>

### ANALYSIS

The Office denied appellant's emotional condition claim by decision dated July 12, 2004, finding that she submitted insufficient evidence to establish any compensable factor of employment. Appellant's counsel requested reconsideration on June 27, 2005 and submitted a December 15, 2004 report from Dr. Siewers and an undated statement by Ms. Lanzo. Appellant's June 27, 2005 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she 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 requirements under section 10.606(b)(2).<sup>7</sup>

With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, appellant submitted a December 15, 2004 report by Dr. Siewers, an undated statement by Ms. Lanzo, a time analysis form for the period September 15 to October 1, 2004 and a September 25, 2004 claim for a recurrence of disability beginning September 25, 2004 due to her December 8, 1999 employment injury in Office File No. 020773074. The report by Dr. Siewers, although new evidence, is not relevant to the underlying issue of whether appellant has established any compensable employment factors resulting from an alleged traumatic incident on December 31, 2003. Similarly, the undated statement by Ms. Lanzo is also new, but is not relevant to the underlying issue as Ms. Lanzo merely noted that appellant became upset when asked if she would deliver "do 1 hour street delivery on 24 route." This is not evidence of harassment on December 31, 2004 as alleged by appellant. Further, the time analysis is not relevant to the threshold issue of this case. As appellant did not submit any relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).<sup>8</sup>

### CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

---

<sup>6</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>7</sup> 20 C.F.R. § 10.608(b)(2)(i) and (ii).

<sup>8</sup> 20 C.F.R. § 10.608(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 18, 2005 is affirmed.

Issued: May 11, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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