

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MARY C. SIMMONS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Waterford, NY, Employer**

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**Docket No. 06-562  
Issued: May 8, 2006**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 9, 2006 appellant filed a timely appeal from a November 1, 2005 Office of Workers' Compensation Programs' nonmerit decision. Because more than one year has elapsed between the last merit decision dated December 12, 2003 and the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501(c)(2) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

**FACTUAL HISTORY**

This is the third appeal before the Board. On October 28, 2002 appellant, a 50-year-old mail clerk, filed a Form CA-2 claim for benefits, alleging that she had developed an emotional condition causally related to her employment. By decisions dated May 20 and December 12, 2003, the Office denied the claim, finding that appellant failed to establish any compensable

factors of employment. In an August 13, 2004 decision,<sup>1</sup> the Board affirmed the Office's decisions. The facts of this case as set forth in the Board's August 13, 2004 decision are herein incorporated by reference.

On August 30, 2004 appellant's attorney filed a petition for reconsideration with the Board, contending that it was unnecessary for her to submit evidence corroborating the events that she had alleged in order to implicate factors of employment. Counsel indicated that the burden was on the Office or the employing establishment to investigate appellant's allegations of abuse and harassment, and that the mere denial of these events by the Office was not sufficient to discharge this burden. He further argued that the medical evidence served as confirmation of the claimed employment factors, and that the Office had failed to discharge its obligation to develop the evidence, including evidence from witnesses and the employing establishment.

By order dated December 27, 2004,<sup>2</sup> the Board denied the petition for reconsideration. The Board noted that the three cases cited to support the contention that appellant was not required to corroborate her account of events were not applicable. The Board noted that a medical history is not an independent source of information and does not confirm the history of events given by the patient. The record did not support appellant's contention that the Office neglected its responsibility to develop the evidence and appellant had mischaracterized the burden of proof in emotional condition cases. The Board stated that allegations alone by a claimant are insufficient to discharge her burden of proof; a claimant must substantiate her allegations with probative and reliable evidence.

By letter dated July 28, 2005, appellant's attorney requested reconsideration. Appellant's attorney reiterated contentions and legal arguments which he submitted in previous requests.

By decision dated November 1, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), 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 constituting relevant and pertinent evidence not previously considered by the Office.<sup>3</sup> 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>4</sup>

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<sup>1</sup> Docket No. 04-959 (issued August 13, 2004).

<sup>2</sup> Docket No. 04-959 (Order issued December 27, 2004).

<sup>3</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>4</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

### **ANALYSIS**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not constituted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>5</sup> Appellant has not submitted new evidence which addresses the relevant issue in this case: whether she established a compensable employment factor which may have contributed or given rise to her emotional condition or disability under the Act. The factual arguments and legal contentions advanced by appellant's attorney were previously considered by the Board and the Office and are therefore cumulative and repetitive. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

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

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<sup>5</sup> See *David J. McDonald*, 50 ECAB 185 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 8, 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