United States Department of Labor
Employees' Compensation Appeals Board

E.V., Appellant	)	
and	)	**Docket No. 06-1544**
	)	**Issued: November 16, 2006**
DEPARTMENT OF VETERANS AFFAIRS, JOHN D. DINGELL MEDICAL CENTER, Detroit, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 27, 2006 appellant filed a timely appeal from the March 28, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has no jurisdiction to review the merits of appellant's claim or the Office's March 4, 2005 decision denying compensation, as appellant filed her appeal to the Board more than one year after the date of that decision.

ISSUE

The only issue on this appeal is whether the Office properly denied appellant's March 1, 2006 request for reconsideration.

FACTUAL HISTORY

On February 10, 2004 appellant, then a 42-year-old nursing assistant, filed a claim alleging that she sustained stress as a result of her federal employment. She first became aware

of her condition on January 21, 2004, when her supervisor canceled her overtime. In a later narrative statement, appellant stated that egregious harm had come to her health and psychological well being as a result of the treatment she received from her supervisor and coworkers. She provided a chronology of incidents dating back to September 27, 1998. She described the January 21, 2004 incident mentioned, as follows:

> "A patient family member called me stupid. I stated: 'Please sir, do not call me stupid.' The young man stated: 'Stop acting like an imbecile.' I left out the patient room at that time. The young man spoke with my supervisor, Belinda Ice, RN, CNM. Ms. Ice called me into her office. She asked me why a family member waiting to see her about me. I stated the above. Ms. Ice in turn cancelled my overtime and sent me home after my shift ended. I felt as if Ms. Ice was agreeing with the young man and I was being punished once again for someone slandering and defamation of my character. I feel I cannot work any longer under those conditions. The constant slandering, harassment, hostile work environment promulgated me to seek help."

In a decision dated May 5, 2004, the Office denied appellant's claim for compensation. The Office reviewed the evidence submitted and found that none of the incidents alleged were compensable. The incidents that were deemed to have occurred as alleged involved appellant's dislike in the way administrative actions were handled and the way in which she was disciplined. The Office noted that, because the factual foundation of appellant's claim was not established, there was no requirement to review the medical evidence.

In a decision dated March 4, 2005, an Office hearing representative reviewed appellant's case, including the additional evidence submitted after the May 5, 2004 denial of her claim and her testimony at the October 28, 2004 oral hearing. The hearing representative determined that the evidence was not sufficient to accept any compensable factors of employment resulting in appellant's emotional condition.

On March 1, 2006 appellant requested reconsideration. She took issue with the fact that the Office did not review her medical records. She stated:

> "I was under a tremendous amount of stress working in hostile environment where I was discriminated and retaliated against which lead to me becoming a diabetic and depressed do to public embarrassment, ridiculed, intimidation, harassed, threatened, slander, deformation of my character and my equal rights were violated on a weekly basic for years. I became psychologically ill during the course of my employment compensable factor arose from repeated incident of occurrence. I submitted document to show [the Office] that I was being discriminated against through retaliation with the frequent statements written against me, the documents are not union finding or EEO [Equal Employment Opportunity] [Commission] finding to be consider[ed] [f]actual."

Appellant argued that the initial decision to deny her claim should be retracted and that the hearing representative affirmed the denial of compensation without reviewing her medical records. She added:

> "It has been over a year I need to get help for my depression but I have no medical insurance, I finally had enough money to go see my diabetic doctor to get refilled on my medications now I [a]m dealing with diabetic neuropathy in my hands and feet lack of medical treatment on regular schedule I [a]m just tired of all of this the VA [Veterans Administration] really did a job on me I cannot die because I do n[o]t have any life insurance.
>
> "In conclusion, I am in the court system trying to get my job back and follow through with Merit [S]ystem [P]rotection [B]oard and EEO C[omission]. Documents are enclosed to support statement."

To support her request for reconsideration, appellant submitted a November 30, 2004 letter of proposed removal and a January 6, 2005 letter of removal. She submitted part of a decision by an administrative judge affirming the employing establishment's action in removing her. A February 23, 2006 opinion from the Merit Systems Protection Board vacated the administrative judge's decision and remanded the matter for further adjudication and a new initial decision addressing the merits of her claims of discrimination and retaliation. Appellant submitted a July 7, 2005 notice regarded unemployment benefits. She submitted a May 24, 2005 note from Dr. Bernard Kole and a May 25, 2005 report from Dr. Pamela D. Kresta. She also submitted an acknowledgment and scheduling order from the EEO Commission, an earnings and leave statement, a check and a specimen donor document from 2003.

In a decision dated March 28, 2006, the Office denied appellant's request to reconsider the merits of her claim. The Office found that appellant's statement was mostly repetitive, reiterating her perception that she was harassed and discriminated against. The Office noted that medical evidence need not be reviewed unless and until a compensable factor of employment was established. The Office found that some of appellant's allegations were unsubstantiated and had no relevance to the issue at hand. The Office explained that the additional medical evidence was irrelevant because appellant's claim was denied on a factual basis. The Office found that other evidence, such as those relating to her removal, the scheduling order and drug testing, was irrelevant to the denial of her claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the

district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[1] Application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[2]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[3]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[4]

ANALYSIS

Appellant's March 1, 2006 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Appellant argued that the Office should have reviewed her medical records. But the Office addressed this matter in both its May 5, 2004 and March 4, 2005 decisions, so the argument is not a new one. The argument is also not relevant to the denial of her claim. Because appellant failed to establish a factual basis for her claim, the medical evidence never became an issue. A claimants must first establish a factual basis for the claim before medical opinions on causal relationship become relevant. The Office denied appellant's claim because she related her emotional and physical complaints to incidents, such as the cancellation of her overtime on January 21, 2004, that normally do not entitle an employee to workers' compensation. It found that she did not establish administrative error or abuse in the canceling of her overtime. The underlying issue in the case is factual: whether she established a compensable factor of employment. The Office properly found that arguments reiterating appellant's allegations that she was harassed and discriminated against were repetitive and did not warrant a reopening of her case for a merit review.

[1] 20 C.F.R. § 10.605 (1999).

[2] *Id*. at § 10.607.

[3] *Id*. at § 10.606.

[4] *Id*. at § 10.608.

Appellant supported her March 1, 2006 request for reconsideration by submitting additional evidence, but none of this evidence is relevant to the denial of her claim. None of the evidence shows or even tends to show, that she was harassed or threatened or discriminated against or that employing establishment wrongly disciplined her or otherwise committed administrative error or abuse. The February 23, 2006 opinion from the Merit Systems Protection Board, which vacated the administrative judge's decision and remanded the matter for further adjudication, made no finding on the merits of appellant's allegations of discrimination and retaliation. The Board finds that the evidence appellant submitted to support her request for reconsideration does not constitute relevant and pertinent new evidence not previously considered by the Office and, therefore, does not entitle her to a merit review of her case.

As appellant's request for reconsideration fails to meet at least one of the three standards for obtaining a merit review of her case, the Board finds that the Office properly denied her request.[5]

CONCLUSION

The Board finds that the Office properly denied appellant's March 1, 2006 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[5] The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, has no jurisdiction to review the new evidence appellant submitted on appeal.