United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 05-1256**
	)	**Issued: October 2, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX, Employer	)	

Appearances:
J.D. Watt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 15, 2004 merit decision denying her emotional condition claim, and January 13, 2005 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant sustained an emotional injury in the performance of duty; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 30, 2004 appellant, a 47-year-old office automation clerk, filed an occupational injury claim alleging that she suffered from post-traumatic stress disorder as a result of incidents of her federal employment. She indicated that she first became aware that her condition was caused by factors of employment on February 13, 2004. Appellant alleged that

she was sexually harassed by her supervisor Bruce Sora "over and over again" by obscene comments and gestures. She stopped working on March 26, 2004.

By letter dated April 19, 2004, the Office notified appellant that the information submitted was insufficient to establish her claim. It advised her to submit a description of employment-related conditions or incidents that she believed contributed to her illness; specific aspects of her employment that she considered detrimental to her health; a description of all practices or incidents affecting her condition; and a medical report describing symptoms, treatment and an explanation as to how the alleged work incidents or exposure contributed to her condition.

In a narrative dated March 3, 2003[1] entitled "Sexual Harassment Documentation," appellant related numerous incidents of alleged harassment on the part of the employing establishment. She alleged:

> (a) On June 10, 2003 Mr. Sora called her into his office to take notes. She stated that "he would rock back and forth in his seat moving his hips in a sexual way, as if he was having sex. He would breath heavy and stare at me while holding his penis." Appellant stated that she asked him not to flirt with her, and that he said, "O.K."
>
> (b) On June 13, 2002 Mr. Sora told appellant that he wanted two wives. He also told her that he had high blood pressure and could not get "hard" enough to have sex if he took his blood pressure medicine. He allegedly told appellant that he would not take his medication, in case he should have sex with his wife or appellant.
>
> (c) On June 17, 2003 Mr. Sora told appellant that he was a "hot-natured man" and sometimes he had to run to the bathroom because she turned him on. He also allegedly told appellant that she should wear short dresses and show her breasts sometimes. Appellant claimed that Mr. Sora told her that "he could promote [her] or demote [her]."
>
> (d) Linda Goodman said things to demoralize her, such as, "You're just a director after all."
>
> (e) On July 18, 2003 Mr. Sora went into appellant's office to show her how to format a letter. He then allegedly bent over her shoulder, placed his hand on her right hand and started breathing heavily down the back of her neck. Appellant claimed that, after Mr. Sora showed her how to format the letter, he stood behind her chair, looking at her backside and rubbing his penis. Appellant stated that she "ignored him." Appellant further claimed that, when Mr. Sora asked her if she

[1] The Board notes that, although the narrative is dated March 3, 2003, appellant's documentation refers to events which allegedly occurred from June 10, 2003 to February 20, 2004. Accordingly, the document was likely prepared in March 2004.

had ever filed sexual harassment charges against anyone, she responded by telling him that she had "been through that" and did not want to go through it again.

(f) On July 21, 2003 Mr. Sora drove appellant to her car and told her that he enjoyed having oral sex. Appellant alleged that Mr. Sora told her he only enjoyed having black women "giving him blow jobs." Appellant allegedly told Mr. Sora that she "[didn't] do that" and that she did not want to ride with him. She claimed that Mr. Sora then stated that he would not speak in that fashion again and "insisted that [she] let him drive [her] to [her] car all the time."

(g) On August 22, 2003 Mr. Sora told appellant that certain people in the file room have sex with each other during and after work. Appellant stated that she found the statement offensive and interpreted it as an indication that he wanted to have sex with her at work.

(h) On August 26, 2003 at a seminar dinner she attended with him, Mr. Sora told appellant that the pantsuit she was wearing "made him hot." Mr. Sora allegedly told appellant that he would be the person who would decide whether or not she could leave his department and that she knew what she would have to do in order for that to happen.

(i) On September 16, 2003 Mr. Sora asked appellant to work on the weekend. She alleged that, when she told him "no," Mr. Sora told her that he just wanted to be with her.

(j) On October 25, 2003 appellant agreed to assist Mr. Sora in organizing his office. She alleged that, when she entered the office, the lights were off and music was playing. Mr. Sora allegedly told her to relax and let him massage her shoulders, and that they could work later. When she told Mr. Sora that she wanted to leave, he promised that he would not say another word to offend her and that he just wanted some company. Appellant stated that she felt threatened because he had the power to fire her. She further alleged that Mr. Sora reminded her that her performance evaluation would be coming up soon.

(k) On December 27, 2003 Mr. Sora called appellant in Virginia while she was visiting her daughter. When he heard a baby crying in the background, he allegedly told appellant that the baby "needed [her] breast."

(l) On January 13, 2004 Mr. Sora told appellant that he liked oral sex. He also stated that he liked the way another employee dressed because she wore short skirts and low blouses.

(m) On February 3, 2004 Mr. Sora asked her what she was doing on her day off. When she told him she was having a pedicure, he asked her if she was wearing underwear and told her he "could do some things with those toes."

(n) On February 12, 2004 Mr. Sora gave her some boots, stating that he wanted her to be happy. Appellant initially tried to return the boots, but after a week and a half, she took them home to show her husband.

(o) On February 13, 2004 Mr. Sora asked appellant what she was planning to do on President's Day. When she told him she was going to the dentist, he replied, "You want to get your teeth pearly white so you can suck some dicks." Appellant alleged that Mr. Sora gave her his credit card number and expiration date and told her to buy anything she wanted, so long as she gave him what he wanted.

(p) On February 20, 2004 Mr. Sora asked her to go on a date with him. She accompanied him to a restaurant, where he ordered wine and told her to order a margarita. Mr. Sora told appellant that they should have sex, since there was already a rumor to that effect going around at work.

Appellant alleged that the sexual harassment made her feel "belittled" and intimidated her to the point that she sat in her office in the dark. Sometimes she closed her door and read the Bible. Appellant stated that, because she feared for her job, she did not speak to anyone at work about the harassment. She stated that she did confide in her husband, her aunt and her friend, Norma. Appellant claimed that she felt robbed of her rights as a woman to work in a good environment. She further stated that she felt unsafe because Mr. Sora had her address.

Appellant submitted March 26, 2004 clinic notes signed by Dr. Olubayo Idowu, a Board-certified internist, who provided a diagnosis of depression and indicated that appellant was within a state of anxiety regarding a sexual harassment problem.

Appellant submitted an undated report from Dr. Jesse C. Ingram, a clinical psychologist, who stated that appellant was referred to him for job stress and depression related to a sexual harassment incident. Noting appellant's history of rape by her pastor at age 10, Dr. Ingram indicated that appellant felt that she was raped over and over by comments made by Mr. Sora. Dr. Ingram related appellant's allegations that Mr. Sora made sexually inappropriate comments to her on February 13, 2004 when she informed him that she was going to the dentist. She also told Dr. Ingram that Mr. Sora gave her his credit card number and told her to buy anything she wanted, as long as she gave him what he wanted. Appellant reported other incidents of harassment since June 2003 and stated that she felt "terrible" and could not "take it anymore." She alleged that she did not speak to anyone at work about the harassment for fear of losing her job. Dr. Ingram provided diagnoses of post-traumatic stress disorder, chronic with delayed onset; depressive disorder, severe and anxiety disorder, severe.

The record contains a March 1, 2004 notice of rights and responsibilities regarding appellant's Equal Employment Opportunity (EEO) complaint and an alternative dispute resolution notice.

Appellant submitted a March 30, 2004 disability slip from Dr. Ingram, reflecting that she was unable to work for 30 days due to a stress-related work injury in February 13, 2004.

By letter dated April 27, 2004, the Office asked the employing establishment to address the accuracy of appellant's allegations of harassment.

The record contains an April 23, 2004 settlement agreement between appellant and the employing establishment, reflecting appellant's withdrawal of her EEO discrimination complaint and waiver of her right to file a civil action. The agreement provided that the terms of the agreement did not constitute an admission of guilt or liability on the part of either party.

Appellant submitted disability slips dated May 3 and May 28, 2004 from Dr. Maluana Crivens Hogan, a clinical psychologist. In each slip, Dr. Hogan stated that appellant was disabled for 30 days due to a stress-related work injury that occurred on February 13, 2004.

In a May 12, 2004 memorandum, the employing establishment controverted appellant's claim. Gerald W. Jones, Sr., chief of the medical administrative services, stated that appellant's supervisor disputed allegations of sexual harassment. He indicated that a fact-finding investigation by an EEO officer had produced no witnesses to substantiate appellant's allegations.

By decision dated June 15, 2004, the Office denied appellant's emotional condition claim, finding that appellant had failed to establish any compensable factors of employment. Specifically, the Office concluded that appellant had not established a factual basis for her claim.

In a November 23, 2004 request made to Mr. Jones of the employing establishment, appellant asked to be removed from the supervision of Shirley Bowles. Appellant alleged that Ms. Bowles left the impression that she did not want anything to do with appellant when she assigned her to work with Eileen Fairley in July 2004. She felt degraded and belittled by a statement Ms. Bowles allegedly made about her ability to work in the clinic. Ms. Bowles told her that all she needed to do was "pop h[er] prozac and go to work. Appellant claimed that she had anxiety attacks just thinking about how Ms. Bowles would belittle her and felt uncomfortable under her supervision. In November 2003, Ms. Bowles told appellant that she had to do what she was told because she was appellant's supervisor. Appellant claimed that her blood pressure elevated and her heart was beating fast. She stated her belief that she was being punished for the sexual harassment incident.

In an April 27, 2004 report, Dr. Ingram related that appellant was distraught because a patient spit on her. Appellant also felt threatened because of sexual innuendoes made by her supervisor.

The record contains counseling notes from Dr. Hogan for the period April 27 through June 17, 2004, reflecting appellant's feelings of stress relating to alleged sexual harassment at work. In a November 24, 2004 disability slip, Dr. Hogan stated that appellant was unable to work for 30 days.

On November 23, 2004 appellant requested reconsideration of the Office's June 15, 2004 decision.

In support of her request, appellant submitted notes from Dr. Hogan dated June 4, 11 and 17, 2004. She submitted an unsigned and undated statement alleging that the director of the hospital informed her that she would be required to work in the flu clinic, in spite of the fact that it was "too stressful." In an undated letter to Silver Wayne, supervisor of medical transcription, appellant alleged that she was a handicapped person; that she went to the employing establishment expecting to work in "peace not fear and worry"; and that she asked for accommodations, but did not receive them.

In a narrative statement dated November 23, 2004, appellant alleged:

(a) She signed a settlement agreement not knowing her full rights and was given false information by the EEO representative;

(b) She felt she was having a nervous breakdown because of sexual harassment by Mr. Sora and that "all day long he asks [her] to have sex with him";

(c) She was being taunted by everyone at the hospital and felt as if the entire staff was against her for coming forth with the sexual harassment charges;

(d) She told a coworker, Elijah Barnes, that she had been sexually harassed by another employee, but refused to disclose the name of the harasser;

(e) She told her friend, Norma Jackson, that she had been sexually harassed by Mr. Sora and that she did not report him because she was afraid of losing her job;

(f) She told her husband, aunt, and Cliff Henry that someone was harassing her;

(g) She told Silver Wayne and Eileen Farley that Mr. Sora was sexually harassing her;

(h) She can trust no one in the hospital;

(i) Her assignment to the flu clinic was not in accordance with the EEO settlement agreement, but that she was forced to remain in the clinic.

By decision dated January 13, 2005, the Office denied appellant's request for reconsideration, finding that she had submitted no new relevant evidence to support her allegations of sexual harassment; had advanced no new legal contentions; and submitted no evidence showing that the Office erroneously applied or interpreted a point of law.

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

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act.[3] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her duties.[4] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[5] Moreover, although administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.[6]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding that there are no compensable factors. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.[7] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.[8] As a rule, allegations

[2] *Leslie C. Moore*, 52 ECAB 132 (2000).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Id. See also Peter D. Butt, Jr.*, 56 ECAB ___ (Docket No. 04-1255, issued October 13, 2004).

[6] *See Charles D. Edwards*, 55 ECAB ___ (Docket No. 02-1956, issued January 15, 2004); *see also Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

[7] *Margaret S. Krzycki*, 43 ECAB 496 (1992).

[8] *See Charles D. Edwards*, *supra* note 6.

alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[9]

Generally, 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.[10] 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.[11] An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.[12] Likewise, an employee's dissatisfaction with perceived poor management is not compensable under the Act.[13]

With regard to emotional claims arising under the Act, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other agencies, such as the EEO Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under the Act, the term harassment is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.[14]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[15]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by his employment.[16] Neither the mere fact that a disease or condition manifests itself during a period of employment

---

[9] *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued September 10, 2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) *and Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[10] *Felix Flecha*, 52 ECAB 268 (2001).

[11] *James E. Norris*, 52 ECAB 93 (2000).

[12] *Barbara J. Latham*, 53 ECAB 316 (2002).

[13] *Id.*

[14] *Beverly R. Jones*, 55 ECAB ____ (Docket No. 03-1210, issued March 26, 2004).

[15] *James E. Norris*, *supra* note 11.

[16] *See Charles D. Edwards*, *supra* note 6.

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[17]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established any compensable factors of employment under the Act.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[18] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[19] In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish her claim.[20] Appellant provided no corroborating evidence to support her numerous allegations. She alleged that Mr. Sora repeatedly made sexual advances, made lewd and demoralizing statements, and threatened her job security. She claimed that Ms. Bowles belittled her by mocking her use of prozac. On the other hand, the employing establishment denied that appellant's supervisors had acted inappropriately and stated that a fact-finding investigation by an EEO officer had produced no witnesses to substantiate appellant's allegations. Although she alleged that she had complained to family, friends and coworkers about Mr. Sora's behavior, appellant provided no witness statements or other evidence to document any of her allegations. Her allegations alone are insufficient to establish a factual basis for her claim.[21] Moreover, appellant's general allegations that she was treated unfairly and disrespectfully by management are insufficient to establish that harassment did, in fact, occur. Thus, the Board finds that appellant has not established a compensable employment factor under the Act with respect to these above-described allegations of harassment and discrimination.

The record reflects that appellant filed an EEO complaint. Grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[22] Where an employee alleges harassment and cites specific incidents, the Office or other appropriate fact-finder must determine the truth of the allegations. The issue is not whether

---

[17] *Ronald K. Jablanski*, 56 ECAB ___ (Docket No. 05-482, issued July 13, 2005). *See also Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[18] *See Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004). *See also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[19] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[20] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[21] *See Charles E. McAndrews*, *supra* note 9.

[22] *See James E. Norris*, *supra* note 11. *See also Parley A. Clement*, 48 ECAB 302 (1997).

the claimant has established harassment or discrimination under EEO Commission standards. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[23] Appellant has failed to do so in the instant case. Moreover, the record reflects that appellant entered into a settlement agreement with the employing establishment, whereby she withdrew her EEO discrimination complaint. The agreement provided that its terms did not constitute guilt or liability on the part of either party.

In the present case, appellant has not attributed her emotional condition to the performance of her regular duties or to any special work requirement arising from her employment duties under *Cutler*,[24] nor has appellant implicated her workload as having caused or contributed to her emotional condition. Appellant alleged that she was required to work in the flu clinic, in spite of the fact that it was "too stressful." The Board finds that appellant's allegations that her supervisors engaged in improper disciplinary actions and otherwise unfairly modified her work assignments relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[25] Although the handling of disciplinary actions and the assignment of work duties and the monitoring of work activities are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[26] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[27] The Board finds that appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. On the contrary, the evidence presented establishes that the employing establishment acted reasonably in the assignment of appellant's duties. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant alleged numerous instances of verbal abuse. She claimed that Ms. Bowles informed her that she had to do what she was told because Ms. Bowles was her supervisor, and that all she needed to do was "pop her prozac and go to work." She also alleged that Ms. Goodman told her that she did not have time for appellant and said things to demoralize her, like "You're just a director after all." While the Board has recognized the compensability of verbal abuse in certain situations, this does not imply, however, that every statement uttered in

---

[23] *See James E. Norris, supra* note 11. *See also Michael Ewanichak*, 48 ECAB 354 (1997).

[24] *See Lillian Cutler, supra* note 4.

[25] *See Lori A. Facey*, 55 ECAB ___ (Docket No. 03-2015, issued January 6, 2004*). See also Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[26] *Id.*

[27] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

the workplace will give rise to coverage under the Act.[28] While the manner and tone of appellant's supervisors may have made appellant uncomfortable, the Board finds that the alleged statements of Ms. Bowles and Ms. Goodman did not constitute verbal abuse or harassment.[29] Ms. Bowles' statement regarding the requirement for appellant to follow her supervisor's instructions related to administrative matters and was appropriate under the circumstances. The alleged statement regarding appellant's use of prozac may have offended appellant, but did not arise to the level of being a compensable factor under the Act. Moreover, appellant did not provide any evidence to corroborate that the statements were actually made. Appellant has not provided a factual basis for her allegations.

Appellant generally indicated that she felt devastated by her supervisors' treatment and believed that their actions were retaliatory in nature. However, under the circumstances of this case, the Board finds that appellant's emotional reaction must be considered self-generated, in that it resulted from her perceptions regarding her supervisors' actions.[30] Appellant also alleged that she was depressed as a result of being required to work in the flu clinic, in spite of the fact that it was "too stressful." Appellant's frustration from not being permitted to work in a particular environment is not a compensable factor under the Act.[31]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[32]

LEGAL PRECEDENT -- ISSUE 2

The Act[33] 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 may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[34]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law;

[28] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995).

[29] *See Denis M. Dupor*, 51 ECAB 482, 486 (2000).

[30] *See David S. Lee*, 56 ECAB ___ (Docket No. 04-2133, issued June 20, 2005).

[31] *See Cyndia R. Harrill*, 55 ECAB ___ (Docket No. 04-399, issued May 7, 2004).

[32] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, *supra* note 7.

[33] 5 U.S.C. § 8101 *et seq.*

[34] 20 C.F.R. § 10.605.

(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.[35]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.[36] 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.[37]

ANALYSIS -- ISSUE 2

In her November 23, 2004 request for reconsideration, appellant 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. 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).[38]

With respect to the third requirement under section 10.606(b)(2), appellant did not submit relevant and pertinent new evidence not previously considered by the Office.[39] In its June 15, 2004 decision, the Office denied appellant's claim on the grounds that she had failed to establish a factual basis for her claim. In support of her request for reconsideration, appellant submitted notes from Dr. Hogan; a statement alleging that the director of the hospital informed her that she would be required to work in the flu clinic, in spite of the fact that it was "too stressful"; a letter from appellant to Silver Wayne alleging that she was a handicapped person who asked for accommodations, but did not receive them; and a narrative statement from appellant reiterating her claims of sexual harassment. The evidence submitted is duplicative of evidence already in the record and, thus, does not constitute a basis for reopening the case.[40] Moreover, psychologists' notes and subjective complaints of harassment do not provide a factual basis for appellant's claim and are, therefore, not relevant to the issue before the Office. Accordingly, the Board finds that the Office properly denied appellant's request for merit review.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of

[35] 20 C.F.R. § 10.606.

[36] *Donna L. Shahin*, 55 ECAB ___ (Docket No. 02-1597, issued December 23, 2003).

[37] 20 C.F.R. § 10.608.

[38] 20 C.F.R. § 10.606(b)(2).

[39] 20 C.F.R. § 10.608(b)(1) and (2).

[40] *See Betty A. Butler*, 56 ECAB ___ (Docket No. 04-2044, issued May 16, 2005).

employment. The Board further finds that the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 13, 2005 and June 15, 2004 are affirmed.

Issued: October 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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