



related issues, which exacerbated and prolonged his preexisting conditions. Appellant stated that, after consultation with an attending physician, he became aware of the causal relationship between his conditions and employment and realized that he could no longer work. On June 18, 1998 he retired on disability.

In a June 13, 2001 narrative statement, appellant noted the physical and emotional conditions he sustained as a result of being a Vietnam War veteran. He stated that a series of incidents at the employing establishment from December 1997 through June 18, 1998 and personal and family problems aggravated these conditions. Appellant alleged that, in December 1997, Postmaster Mark C. Edstrom wrote on his request for a transfer to an employing establishment office in Panama City, Florida, that he had been suspended for sexual harassment which was untrue. He stated that the documents relating to this incident were sealed and maintained in confidence. Appellant also attributed his emotional condition to receiving disciplinary letters issued by the employing establishment for causing a disturbance on the workroom floor, making a derogatory comment to a coworker and failing to lock his postal vehicle and to provide requested medical documentation for his absence from work during his father's critical illness. On June 17, 1998 he had a verbal altercation with his street supervisor regarding the delivery of accountable and overtime work. Appellant noted that several grievances involving carriers work schedules had been filed.

Appellant submitted several documents regarding his grievances, which included the employing establishment's proposal to remove him as a result of lowering his pants in front of a female coworker in the swing room on February 9, 1992. He also submitted disciplinary letters issued by the employing establishment for failing to properly secure his postal vehicle and to submit medical documentation in support of his absence from work and for making an unwarranted statement to a coworker. A June 11, 2001 medical report from Dr. Amelia Kerrigan, an attending Board-certified psychiatrist, found that appellant sustained a work-related emotional condition.

The employing establishment controverted appellant's claim, stating that it was not timely filed and there was no evidence establishing that he sustained an injury while in the performance of duty. In an undated letter, Postmaster Edstrom admitted to releasing documents regarding the sexual harassment incident to the Panama City Postmaster, but stated that he did not know that they were sealed, as alleged by appellant. He stated that he was not the postmaster at the time of the incident. After appellant told him that the documents were sealed, Postmaster Edstrom telephoned the Panama City Postmaster and asked him not to consider the sexual harassment incident. He noted that on several occasions appellant told him that he wanted to go to Florida because his ex-wife was taking all his money and he wanted to see his children. Postmaster Edstrom did not want to do anything to prevent appellant from seeing his children. In a June 27, 2001 letter, Postmaster Richard Callahan described appellant's unacceptable and inappropriate behavior at work.

By letter dated July 31, 2001, the Office requested that the employing establishment respond to appellant's allegations and submit information regarding, among other things, his job duties, working conditions and performance. In a letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised him about the factual and medical evidence he needed to submit to establish his claim.

By decision dated January 17, 2002, the Office denied appellant's claim. It found that he did not sustain an emotional condition while in the performance of duty. In letters dated January 22 and February 13, 2002, appellant requested an oral hearing before an Office hearing representative.

Following an August 15, 2002 telephone hearing, appellant submitted grievances and related decisions and witness statements indicating that he was unfairly disciplined while other employees were not disciplined at all for the same conduct. He also submitted documentation in support of his absences from work as requested by Postmaster Edstrom and a request for a change in his schedule.

An evaluation form regarding appellant's request for a transfer to the Panama City office, completed by Postmaster Edstrom on November 15, 1997 indicated, among other things, that appellant received letters of warning for failing to follow instructions and engaging in conduct unbecoming a postal employee. It also indicated that he was suspended for sexual harassment.

In a March 28, 1998 letter, appellant contended that on March 25, 1998 he was harassed by Postmaster Callahan when he instructed him to leave the workroom floor after he asked John Bassett, a supervisor, why his mail had already been sacked upon his arrival on that day. Appellant did not believe that he was disrespectful towards Mr. Bassett.

In a June 26, 1998 letter, appellant stated that, on June 17, 1998, Mr. Bassett scolded him for failing to deliver the mail in a timely manner and threatened to take disciplinary action against him.

In response to appellant's hearing testimony, Postmaster Edstrom reiterated, in a September 10, 2002 letter, his contentions that he did not know that documents relating to the sexual harassment incident were sealed and that he asked the Panama City Postmaster to ignore it. He stated that appellant was not disciplined unfairly as he demonstrated poor work habits and performance, which he believed stemmed from appellant's family problems. Postmaster Edstrom explained why he requested that appellant provide him with medical documentation and that the settlement of a grievance did not mean that an employee was not found to be at fault.

In a September 11, 2002 memorandum, Mr. Bassett explained how a carrier's work schedule is changed. He stated that appellant had not been treated any differently than any other carrier. With regard to the March 25, 1998 incident, Mr. Bassett stated that appellant's behavior was unacceptable and it was addressed accordingly. In a September 9, 2002 letter, Postmaster Callahan described the sexual harassment incident and stated that the denial of appellant's transfer request was not solely based on this incident. He explained why appellant was disciplined for failing to secure his postal vehicle. Postmaster Callahan denied the allegation that appellant's request for a schedule change was denied while two other carriers' requests were granted.

By decision dated November 7, 2002, an Office hearing representative affirmed the Office's January 17, 2002 decision. The hearing representative found that appellant failed to establish that he sustained an emotional condition causally related to compensable factors of his employment.

In a November 5, 2003 letter, appellant, through his attorney, requested reconsideration of the November 7, 2002 decision. Counsel contended that the hearing representative provided an incorrect date for the sexual harassment incident. He also contended that the employing establishment continued to violate the settlement agreement regarding the sexual harassment incident by releasing documents related to it to the Office and it misused information about appellant's family problems which was prejudicial to his claim. Counsel concluded that the employing establishment's violation of the settlement agreement constituted a compensable factor of employment.

Appellant submitted a May 19, 1992 settlement agreement regarding the sexual harassment incident, which reduced a February 11, 1992 proposal to remove him from employment to a seven-day suspension.

In response to appellant's reconsideration request, Postmaster Callahan, in a December 10, 2003 letter, denied breaking a confidentiality agreement regarding the sexual harassment incident. He noted that this incident occurred prior to his arrival at the employing establishment and that he learned about it from appellant. Postmaster Callahan also denied that the union's request to have him removed had any bearing on him leaving his position. He competed for and was awarded a temporary detail assignment, which subsequently became his permanent job. Postmaster Edstrom reiterated, in a December 12, 2003 letter, his lack of knowledge about a confidentiality agreement regarding the release of documents related to the sexual harassment incident. He disagreed with appellant's counsel's statement that he was not qualified to make statements about his family problems as appellant told him on several occasions that he wanted to be near his children in Florida.

In a January 26, 2004 letter, appellant's attorney responded to Postmaster Callahan's December 10, 2003 statements. He stated that appellant denied discussing the sexual harassment incident with Postmaster Callahan based on a confidentiality requirement. Appellant contended that the union requested that Postmaster Callahan be removed from his position. Regarding Postmaster Edstrom's December 12, 2003 statements, counsel contended that he improperly released documents regarding the sexual harassment incident. Appellant denied discussing his children and ex-wife with him.

By decision dated February 5, 2004, the Office denied modification of the November 7, 2002 decision. It found that appellant failed to establish that he sustained an emotional condition causally related to compensable factors of his employment.

Appellant, through his attorney, requested reconsideration by letter dated February 5, 2004. He submitted a December 22, 1998 letter which addressed a settlement of his grievance requesting that Postmaster Callahan be removed because he was harassing him. The requested remedy was deemed moot because Postmaster Callahan was given a position outside the office on a long-term detail assignment. A May 15, 1992 document filed with the Merit Systems Protection Board (MSPB), addressed the grievances appellant filed against the employing establishment for an unfair performance evaluation and its discussion outside the office about disciplinary action taken against him for sexual harassment and being denied the use of the swing room by a female coworker. A March 19, 1992 Step 3 decision of the employing establishment found that appellant was entitled to loss pay for 5.48 hours on September 17, 1991

because his supervisor failed to issue written notification to him about his suspension on that date for being insubordinate. In a January 29, 1991 letter, Al Benjamin, a union representative, contended that appellant was unfairly disciplined by his supervisors because the disciplinary action taken against him was more severe than disciplinary actions taken against others with similar misconduct or no discipline was taken at all.

In a May 6, 1992 letter, appellant argued that the sexual harassment incident violated his right to privacy in that his right to use the swing room to change his clothes had been taken away from him and other male carriers. He submitted a February 3, 2004 cover sheet which indicated that a decision had been issued on the charges he filed against Postmaster Callahan. Appellant also submitted a grievance dated February 15, 1992, contending that the employing establishment denied his contractual right to case his mail and it ignored his attending physician's request and harassed him.

In a February 2, 2005 letter, appellant's counsel asserted that the union requested the removal of Postmaster Callahan. He contended that the documents related to the sexual harassment incident should not have been in appellant's personnel file and the employing establishment violated the settlement agreement by releasing them.

By decision dated March 1, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of its prior decisions.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,<sup>1</sup> the Office regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>2</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>3</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS**

In a February 5, 2004 decision, the Office found that appellant did not sustain an emotional condition while in the performance of duty because he did not establish that the claimed injury was caused by compensable factors of his federal employment. On the same date he disagreed with this decision and requested reconsideration. Thus, the relevant underlying

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<sup>1</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>3</sup> *Id.* at § 10.607(a).

issue in this case is whether appellant sustained an emotional condition due to compensable factors of his employment.

A December 22, 1998 letter indicated that a settlement had been reached regarding a grievance appellant filed to have Postmaster Callahan removed for harassing him. Appellant's counsel's February 2, 2005 letter questioned Postmaster Callahan's credibility with regard to being removed from his position. He argued that the employing establishment violated a settlement agreement by releasing sealed documents relating to the sexual harassment incident to the Panama City Postmaster and by failing to expunge these documents from appellant's personnel file. The December 22, 1998 letter and counsel's arguments were previously of record and considered by the Office. The Board has held that the submission of evidence or argument which repeats or duplicates that already in the case record does not constitute a basis for reopening a case.<sup>4</sup> As such, the Board finds that the December 22, 1998 letter and appellant's counsel's arguments are insufficient to warrant further merit review of appellant's claim.

A May 15, 1992 document filed with the MSPB addressed appellant's grievances which alleged that the employing establishment gave him an unfair performance evaluation and discussed disciplinary action taken against him for sexual harassment outside of the office and that a female coworker denied him the right to use the swing room. Appellant's May 6, 1992 letter reiterated his contention that he was harassed and denied the right to use the swing room by a female coworker. His February 15, 1992 grievance alleged that the employing establishment denied appellant's contractual right to case his mail and it ignored his attending physician's request and harassed him. As the May 15, 1992 document and appellant's May 6, 1992 letter and February 5, 1992 grievance merely list his allegations against the employing establishment and coworker, without providing corroboration, they do not constitute relevant and pertinent new evidence sufficient to reopen his claim for a merit review.

The employing establishment's Step 3 grievance decision dated March 19, 1992 found that appellant was entitled to loss pay for 5.48 hours on September 17, 1991 because his supervisor failed to issue written notification to him about his suspension on that date for being insubordinate. Mr. Benjamin's January 29, 1991 letter contended that appellant was unfairly disciplined by his supervisors because the disciplinary action was more severe for him than that taken against others with similar misconduct or no discipline was taken at all. A February 3, 2004 cover sheet indicated that a decision had been rendered regarding appellant's charges against Postmaster Callahan. The Board finds that this evidence is not relevant as the employing establishment's decision did not find that appellant's supervisor erred in disciplining appellant. Similarly, the cover sheet does not indicate that a decision was issued finding that Postmaster Callahan erred in handling any matters involving appellant. Further, Mr. Benjamin did not specifically identify incidents where the employing establishment disciplined appellant differently than his coworkers.

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<sup>4</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

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

Issued: October 25, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board