

FACTUAL HISTORY

This case was previously before the Board. By decision dated September 29, 2004, the Board affirmed an October 15, 2003 Office decision that denied appellant's claim for an emotional condition.³ The September 9, 2004 Board decision is herein incorporated by reference.

By decision dated January 26, 2005, the Office denied modification of its prior decisions denying appellant's emotional condition claim.⁴

On January 14, 2006 appellant requested reconsideration and submitted additional evidence. She stated her objections to the Office's January 26, 2005 decision and alleged that the Office claims examiner was putting "her own spin" on the facts. In an undated statement, Judy Tanner, a supervisor, stated that, during the investigation into appellant's allegations of sexual harassment, employees who were interviewed were told not to discuss the case with anyone. However, appellant solicited statements from some of these employees. Several employees told Ms. Tanner that they were uncomfortable being asked by appellant to provide statements. In statements dated August 10, 1995, April 6, 1998 and June 30, 2000, appellant alleged that employees gossiped about her, management told employees not to talk to her about her claim, employees accused her of harassing them when she solicited witness statements and management unfairly reassigned her.

By decision dated October 4, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁵ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

"The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

³ Docket No. 04-704 (issued September 29, 2004). On July 22, 1997 appellant, then a 38-year-old tax auditor, filed a claim alleging that her emotional condition was caused by her federal employment.

⁴ Office decisions denying appellant's emotional condition claim prior to the October 15, 2003 decision were dated July 21, 2000 and September 10, 2001.

⁵ 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.⁶ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁷

ANALYSIS

The merits of the Office's denial of appellant's emotional condition claim are not within the jurisdiction of the Board on this appeal. Therefore, the only issue is whether the evidence submitted by appellant with her request for reconsideration was sufficient to warrant further merit review.

In support of her request for reconsideration, appellant submitted her written statements dated August 8, 1995, April 6, 1998 and June 30, 2000 and an undated statement from Ms. Tanner. These statements described her allegations regarding sexual harassment, employees gossiping about her, management instructing employees not to talk to her about her claim, employees accusing her of harassing them when she solicited witness statements and management unfairly reassigning her. These allegations were included in appellant's statements previously of record dated October 16, 1997, April 6, 1998, September 1, 2002, October 16, 2004 and an undated statement. Appellant's allegations were addressed in the Office's decisions dated July 21, 2000, September 10, 2001, October 15, 2003 and January 26, 2005 and in the Board's September 29, 2004 decision. Consequently, the statements submitted with appellant's reconsideration request do not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied her claim.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2006 is affirmed.

Issued: August 6, 2007
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