

FACTUAL HISTORY

On November 6, 2003 appellant, then a 51-year-old clerk, filed an occupational disease claim alleging that she sustained “acute stress” and high blood pressure due to various incidents and conditions at work. She stopped work on October 31, 2003 and indicated that this was the date that she realized she had an employment-related emotional condition.

In several statements, appellant claimed that when she returned to light-duty work for the employing establishment in early October 2003, management unfairly refused to authorize her use of leave requests or to provide her with work assignments appropriate for her medical condition. She alleged that she was subjected to harassment and discrimination by Tracey Bibbs, a supervisor, and Louann Simmons, the postmaster at her workplace. Appellant asserted that, between October 2 and 31, 2003, Ms. Bibbs and Ms. Simmons yelled at her in an abusive manner and unreasonably monitored and criticized her work performance. She claimed that Ms. Simmons physically abused her by shoving mail in her face, pointing her finger in her face and waving her arms in a threatening manner.

Among the numerous allegations described, appellant claimed that on October 22, 2003 she was working on the computer forwarding system and Ms. Simmons shoved a letter in her face, yelled at her and wrongly accused her of improperly forwarding the letter. On that date, while using the Winbats computer program to process post office box applications, Mr. Simmons unfairly accused her of making an error, pointed her finger near her face in a threatening manner and harshly ordered her to come to her office. Appellant alleged that on October 31, 2003 she was in the box mail section casing mail and Ms. Simmons yelled at her and unfairly accused her of sending box mail through an improper process.

Appellant submitted numerous statements of coworkers in support of her claim, including statements of Cheruyl Peek and Brandy Gann. In an undated statement received by the Office on December 21, 2004, Ms. Peek testified about several incidents, including the October 22, 2003 incident when appellant was working on the computer forwarding system and the October 31, 2003 incident when she was casing box mail. In an August 27, 2004 statement, Ms. Gann testified that Ms. Simmons yelled at appellant on an unspecified date.

In a January 5, 2004 decision, the Office denied appellant’s claim on the grounds that she did not submit medical evidence relating her claimed medical condition to the established employment factors. The Office did not identify any established employment factors.

Appellant requested a hearing before an Office hearing representative and provided testimony at the hearing held on November 19, 2004. In a decision dated and finalized February 10, 2005, the Office hearing representative affirmed the January 5, 2004 decision as modified. He based the denial of appellant’s emotional condition claim on the fact that she did not establish any compensable employment factors. The Office hearing representative extensively detailed appellant’s numerous allegations but found that she was not subjected to harassment or discrimination.

Appellant submitted additional evidence and requested another hearing before an Office hearing representative. The Office exercised its discretion and reviewed the written record. By

decision dated and finalized June 15, 2005, the Office hearing representative affirmed the February 10, 2005 decision.

By letter dated June 14, 2006, appellant, through her attorney, requested reconsideration of the Office's denial of her emotional condition claim. Appellant claimed that she had established that she was harassed on October 22, 2003 while working on the computer forwarding system and Ms. Simmons shoved a letter in her face, yelled at her and wrongly accused her of sending the letter with an error on it. She asserted that she established harassment during another incident on October 22, 2003 when she was using the Winbats computer program and Mr. Simmons unfairly accused her of making an error, pointed her finger in her face and refused to listen to her explanation after ordering her into her office. Appellant alleged that the evidence also showed that on October 31, 2003 she was in the box mail section casing mail and Ms. Simmons yelled at her and refused to accept her explanation regarding her actions. She alleged that the occurrence of these incidents was supported by witness statements of Ms. Peek and Ms. Gann. Appellant also submitted an August 30, 2004 report of Dr. June Nichols, an attending clinical psychologist.

In a June 27, 2006 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a) indicating that it had already considered the arguments and evidence presented by appellant on reconsideration.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that the evidence or argument submitted by 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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.⁴ 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 on the merits.⁵

ANALYSIS

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at work, including harassment and discrimination engaged in by Ms. Simmons, the postmaster at her workplace. On June 15, 2005 the Office denied her claim on the grounds that

² 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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ 20 C.F.R. § 10.607(a).

⁵ 20 C.F.R. § 10.608(b).

she did not establish any compensable employment factors. Appellant subsequently requested reconsideration on June 14, 2006. In a decision dated June 27, 2006, the Office denied her request for further review of the merits of her claim.

In support of her June 2006 reconsideration request, appellant argued that she had established the occurrence of several employment incidents when Ms. Simmons harassed her, including an October 22, 2003 incident which occurred when she was working on the computer forwarding system, an October 22, 2003 incident when she was using the Winbats computer program and an October 31, 2003 incident when she was casing box mail.⁶ She alleged that the occurrence of these incidents was supported by witness statements of Ms. Peek and Ms. Gann.

The submission of this argument and evidence does not require the reopening of appellant's claim for further merit review. The Office had already addressed appellant's arguments regarding these alleged incidents and found that she did not establish any employment factors with respect to them. The Office has already considered the statements of Ms. Peek and Ms. Gann and found that they did not support the occurrence of the employment incidents, as alleged. The Board has held that the submission of argument or evidence which repeats or duplicates evidence already in the case record and considered by the Office does not constitute a basis for reopening a case.⁷

Appellant also submitted an August 30, 2004 report of Dr. Nichols, an attending clinical psychologist. However, this report is not relevant to appellant's claim as it was denied on the grounds that he did not establish any compensable employment factors and the Office would not be required to consider any medical evidence of record.⁸ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

Appellant has not established that the Office improperly denied her request for further review of the merits of its June 15, 2005 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

⁶ 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. *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁸ The Board has held that, when a claimant has not established any compensable employment factors, it need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 27, 2006 decision is affirmed.

Issued: February 22, 2007
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