United States Department of Labor
Employees' Compensation Appeals Board

F.R., Appellant	)	
and	)	**Docket No. 05-15**
	)	**Issued: July 10, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Brock D. Stiles, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2004 appellant, through her attorney, filed a timely appeal from a September 10, 2003 merit decision of the Office of Workers' Compensation Programs reducing her compensation to zero for failing to cooperate with vocational rehabilitation and nonmerit decisions of the Office dated February 5 and August 9, 2004 denying her request for reconsideration under 5 U.S.C. § 8128.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the February 5 and August 9, 2004 nonmerit decisions.[2]

[1] Appellant's appeal was postmarked September 9, 2004, thereby rendering it timely filed pursuant to 20 C.F.R. § 501.3(d)(2)(ii).

[2] The Board previously issued a decision on April 25, 2005 affirming the Office's February 5 and August 9, 2004 nonmerit decisions. The Board found that it did not have jurisdiction over the Office's September 10, 2003 decision based on the filing date of the appeal. Appellant requested reconsideration and argued that her appeal was postmarked September 9, 2004. The Board granted her petition for reconsideration on October 18, 2005 and vacated its April 25, 2005 decision. Order Granting Petition for Reconsideration, Docket No. 05-15 (issued October 18, 2005).

ISSUES

The issues are: (1) whether the Office properly reduced appellant's monetary compensation to zero under 5 U.S.C. § 8113(b) effective July 10, 2003 on the grounds that she did not cooperate with the preliminary stages of vocational rehabilitation; (2) whether the Office, in its February 5, 2004 decision, properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128; and (3) whether the Office, in its August 9, 2004 decision, properly denied appellant's request for merit review under section 8128.

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board reversed Office decisions dated March 4, 1999 and November 20, 1998 terminating appellant's compensation benefits on the grounds that she had no further employment-related condition or disability.[3] The Board found that the opinion of Dr. Roy D. Clark, Jr., a Board-certified psychiatrist and Office referral physician, was insufficient to support that she had no further disability due to her accepted condition of anxiety disorder. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

The Office returned appellant to the periodic rolls effective November 22, 1998. On July 9, 2001 the Office referred her to Dr. Robert I. Fink, a Board-certified psychiatrist, for an impartial medical examination. The Office requested that he determine whether appellant continued to have an anxiety disorder, its relationship to her employment and whether she had any further disability from employment.

In a work restriction evaluation dated July 20, 2001, Dr. Kristin K. Schaaf, a licensed clinical psychologist and appellant's new attending physician, opined that she was unable to resume her usual employment.[4] On July 23, 2001 Dr. Schaaf diagnosed anxiety disorder with symptoms of post-traumatic stress disorder. She attributed the diagnosed conditions to her work injury.

In a report dated September 17, 2001, Dr. Fink diagnosed panic disorder with mild agoraphobia and an anxiety disorder not otherwise specified. He found that it was "impossible at this time to go back and indicate that her anxiety disorder is absolutely unrelated to the accepted facts in this case." Dr. Fink determined that appellant had "an intermittent mild anxiety disorder which does not affect her unless she is involved with issues relating to the [Office] or [the employing establishment]." He recommended a settlement of her workers' compensation claim to facilitate resolution of her symptoms. Dr. Fink asserted:

> "[Appellant] is not capable of working at the [employing establishment] ever again. She will become increasingly anxious and have a situation not dissimilar to what she had in her last years of intermittent work with the [employing establishment]. [Appellant] is not able to return to the job that she had at the time

[3] *Flora E. Rush*, Docket No. 99-1460 (issued November 1, 2000).

[4] Dr. Schaaf began treating appellant subsequent to the Office's identification of the conflict in medical opinion.

> of the injury and she is not capable of returning to any kind of modified work within the [employing establishment]. I do believe that she could work virtually anywhere else but is still potentially subject to similar reactions to similar situations if they would occur."

Based on Dr. Fink's findings, on November 8, 2001 the Office referred appellant for vocational rehabilitation. On December 7, 2001 the Office called appellant, who declined to participate in vocational rehabilitation services based on her physician's advice.[5]

By letter dated February 12, 2002, the Office acknowledged appellant's refusal to participate in vocational rehabilitation and directed her to comply with vocational rehabilitation in good faith or provide reasons for her refusal within 30 days. Appellant advised the Office that she was not participating based on the recommendation of Dr. Schaaf. She provided a report dated February 7, 2002 from Dr. Schaaf, who concurred with Dr. Fink's finding that appellant would not improve until resolution of her workers' compensation claim. She opined:

> "I believe that vocational rehabilitation services will not be helpful and could actually be harmful. [Appellant] reported that she felt 'harassed' and her anxiety symptoms increased when she was called at home and told that her participation in the program was mandatory. Any efforts by your [O]ffice to return her to work will be viewed as 'an attempt to control [her]' and her intense distrust will make those efforts extremely difficult."

In a decision dated April 15, 2002, the Office reduced appellant's compensation to zero under 5 U.S.C. § 8113(b) for failing to participate in the initial phases of vocational rehabilitation. Appellant, through her representative, requested reconsideration. By decision dated August 15, 2002, the Office vacated its April 15, 2002 decision after finding that it had issued the decision prematurely. The Office noted that it had not considered appellant's reasons for failing to participate in vocational rehabilitation. The Office also indicated that Dr. Fink had not specifically found that she could participate in vocational rehabilitation and that Dr. Schaaf opined that rehabilitation would be unhelpful.

In a memorandum dated April 18, 2003, a claims examiner noted that the Office did not need a specific opinion from Dr. Fink that appellant could participate in vocational rehabilitation given his finding that she could perform any position outside the employing establishment.

On April 22, 2003 the Office requested that Dr. Schaaf clarify why she believed that vocational rehabilitation would not be helpful to appellant. In an April 23, 2003 response, Dr. Schaaf diagnosed anxiety disorder not otherwise specified. She asserted, "I believe that, if [appellant] were forced to participate in vocational rehabilitation, she would not benefit due to her distrust and resistance, and she could potentially be harmed as it is likely to cause her symptoms to flare up again." Dr. Schaaf also expressed concern that she might lose control and hurt someone if she felt she was being controlled or manipulated.

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[5] In a report dated December 13, 2001, Dr. Schaaf requested that the Office contact appellant in writing rather than by telephone because she was concerned about her anxiety level and its effect on her pregnancy.

The Office referred appellant for vocational rehabilitation on May 21, 2003. The Office noted that she could not return to work for the employing establishment. In a report dated June 20, 2003, Cathy Cottingham, the rehabilitation counselor, indicated that she had written to the employing establishment to inquire about possible positions. Appellant met with Ms. Cottingham on June 23, 2003. In a closing report dated June 30, 2003, Ms. Cottingham informed the Office that, during the meeting on June 23, 2003, appellant stated that she would hurt the counselor if she "was pushed too far." The rehabilitation counselor stated:

> "Based on the medical information in the file indicating that the claimant cannot return to work at her job of injury, the claimant's lack of transferable skills and the preponderance of medical information indicating that the claimant's condition will never improve until her claim is settled, this [rehabilitation counselor] is recommending that this claimant is not appropriate to participate in vocational services."

On July 22, 2003 appellant, through her attorney, informed the Office that she would not meet with the rehabilitation counselor as her attending physician believed that it would cause "a significant flare of her psychiatric symptoms." By letter dated July 23, 2003, the Office notified appellant that it had terminated the services of Ms. Cottingham because she had "violated our directive not to seek" employment for her with the employing establishment. The Office referred appellant to Carl Gann for rehabilitation services.

In another letter dated July 23, 2003, the Office noted that appellant had cancelled her meeting with the rehabilitation counselor and advised her of the provisions of section 8113(b) of the Federal Employees' Compensation Act.[6] The Office provided appellant 30 days within which to meet with the rehabilitation counselor or submit reasons for her refusal. The Office informed her that if she failed to cooperate without good cause her monetary compensation benefits could be reduced on the assumption that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity.

In a letter dated August 18, 2003, appellant's attorney argued that the Office had inappropriately switched to another rehabilitation counselor because Ms. Cottingham had determined that appellant should not be vocationally rehabilitated. He submitted progress reports dated June 18 and July 30, 2003 from Dr. Schaaf. In the progress reports, Dr. Schaaf described appellant's feelings regarding vocational rehabilitation.

By decision dated September 10, 2003, the Office reduced appellant's compensation to zero effective July 10, 2003 under section 8113(b) of the Act on the grounds that she failed to cooperate with vocational rehabilitation and failed to provide sufficient reasons for her failure to cooperate.[7]

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[6] 5 U.S.C. §§ 8101-8193.

[7] In a letter dated September 15, 2003, the Office warned appellant against making threats toward her rehabilitation counselor.

In a letter dated October 8, 2003, appellant, through her attorney, requested reconsideration of her claim. The attorney argued that Dr. Fink's opinion "did not address whether [appellant] was able to participate in a VR program" and that her attending physician, Dr. Schaaf, "continues to state that [she] is unable to return to work on a permanent basis due to her anxiety disorder." He further noted that the rehabilitation counselor opined that she was unable to participate in vocational rehabilitation.

In support of her request for reconsideration, appellant resubmitted medical reports already of record and additional progress reports from Dr. Schaaf. In a progress note dated August 21, 2003, Dr. Schaaf discussed appellant's complaints regarding her ongoing "battle over vocational services" and found she had increased anxiety. In a progress note dated September 17, 2003, she related that appellant stated that receiving letters from the Office increased her anxiety. In a progress note dated October 27, 2003, Dr. Schaaf found her condition unchanged. On December 17, 2003 she related that appellant provided a history of her supervisor at the employing establishment forcing her to lift 80 pounds while laughing at her and also reported "being threatened [and] harassed by other supervisors as well…." In a progress note dated January 21, 2004, Dr. Schaaf discussed appellant's complaints of stress due to the employing establishment and waiting on a decision from the Office. She indicated that appellant's level of functioning was unchanged.

By decision dated February 5, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of its September 10, 2003 decision.

In a letter dated June 3, 2004, appellant, through her attorney, again requested reconsideration. She submitted progress reports dated February through May 2004 from Dr. Schaaf, who described her current complaints and found her condition unchanged. Appellant also submitted progress notes from Dr. Schaaf already of record.

On March 24, 2004 Dr. Schaaf found that appellant was unable to work or participate in vocational rehabilitation due to her anxiety disorder. She related:

> "[Appellant] remains unable to return to work on a permanent basis due to her anxiety disorder. As I have stated in the past, she has become extremely defensive and distrustful of people in supervisory and management roles as a result of her experiences at the [employing establishment]. In any employment situation where her work is supervised, she will respond as she responded at the [employing establishment]. She will perceive that she is being controlled or harassed, her symptoms will increase, and she will be unable to perform her job duties. Dr. Fink agreed that if she returned to work, she would be 'subject to similar reactions to similar situations.'"

Dr. Schaaf further found that she could not participate in vocational rehabilitation because she would view it as "an 'attempt to control' her" and "she would not benefit due to her distrust and resistance…."

Appellant also submitted a letter dated April 6, 2004 from Ms. Cottingham, who indicated that she did not feel threatened by appellant.

By decision dated August 9, 2004, the Office denied appellant's request for reconsideration as the evidence submitted was insufficient to warrant review of the merits under section 8128 of the Act.

LEGAL PRECEDENT -- ISSUE 1

Section 8104(a) of the Act[8] pertains to vocational rehabilitation and provides: "The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services." Under this section of the Act, the Office has developed procedures which emphasize returning partially disabled employees to suitable employment and determining their wage-earning capacity.[9] If it is determined that the injured employee is prevented from returning to the date-of-injury job, vocational rehabilitation services may be provided to assist in returning the employee to suitable employment.[10]

Section 8113(b) of the Act further provides, "If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104" the Office, after finding that in the absence of such failure the wage-earning capacity of the individual would likely have increased substantially, "may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been [her] wage-earning capacity in the absence of the failure, until the individual in good faith complies" with the directions of the Office.[11] Office procedures require that prior to reduction of compensation a claimant be notified of the provisions of section 8113(b) and provided an opportunity to either resume participation in vocational rehabilitation or provide reasons for not continuing participation.[12] Under section 8104 of the Act, the employee's failure to willingly cooperate

[8] 5 U.S.C. § 8104(a).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813 (August 1995).

[10] *Id*. The Office's regulations provide: "In determining what constitutes 'suitable work' for a particular disabled employee, [the Office] considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors." 20 C.F.R. § 10.500(b).

[11] 5 U.S.C. § 8113(b).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.11(b) (November 1996).

with vocational rehabilitation may form the basis for terminating the rehabilitation program and the reduction of monetary compensation.[13] The Office's implementing regulations state:

> "If an employee without good cause fails or refuses to apply for, undergo, participate in or continue to participate in a vocational rehabilitation effort when so directed, [the Office] will act as follows:"
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> * * *
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> (b) Where a suitable job has not been identified, because the failure or refusal occurred in the early, but necessary stages of a vocational rehabilitation effort (that is, meetings with the [Office] nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), [the Office] cannot determine what would have been the employee's wage-earning capacity.
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> (c) Under the circumstance identified in paragraph (b) of this section, in the absence of evidence to the contrary, [the Office] will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity and [the Office] will reduce the employee's monetary compensation accordingly (that is, to zero). The reduction will remain in effect until such time as the employee acts in good faith to comply with the directions of [the Office]."[14]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[15] The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[16] Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[17]

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[13] *See Wayne E. Boyd*, 49 ECAB 202 (1997) (the Board found that the Office properly reduced the claimant's wage-loss compensation benefits as he failed to cooperate with the early and necessary stages of developing an appropriate training program).

[14] 20 C.F.R. § 10.519.

[15] 5 U.S.C. § 8123(a).

[16] 20 C.F.R. § 10.321.

[17] *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

ANALYSIS -- ISSUE 1

The Office determined that a conflict existed on the issue of whether appellant had any further residuals of her accepted condition of anxiety disorder. The Office referred her to Dr. Fink, a Board-certified psychiatrist, for an impartial medical examination.

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[18] The Board has reviewed the opinion of Dr. Fink and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding appellant's work ability. In a report dated September 17, 2001, Dr. Fink diagnosed panic disorder and anxiety disorder. He found that it was not possible at this point to find that her anxiety disorder was unrelated to work factors. Dr. Fink opined that appellant could not work for the employing establishment but "could work virtually anywhere else." He provided rationale for his opinion by explaining that her anxiety disorder was mild and did "not affect her unless she is involved with" the Office or employing establishment. While Dr. Fink indicated that she remained subject "to similar reactions to similar situations" than those she encountered at the employing establishment, the Board has consistently held that the possibility of a future injury does not form a basis for compensation under the Act.[19] Dr. Fink's opinion is based on a proper factual and medical history and is well rationalized. His opinion is entitled to special weight and establishes that appellant is not totally disabled from employment.

Based on Dr. Fink's September 17, 2001 report, the Office referred appellant to vocational rehabilitation. On December 17, 2001 she declined to participate in vocational rehabilitation, citing the advice of her physician. Appellant submitted a report dated February 7, 2002 from Dr. Schaaf, her attending physician, who opined that rehabilitation would be harmful to her because she would view it as an attempt at control. In a report dated April 23, 2003, Dr. Schaaf diagnosed anxiety disorder not otherwise specified. She again opined that vocational rehabilitation would be of no benefit and that appellant "could potentially be harmed as it is likely to cause her symptoms to flare up again." Dr. Schaaf also noted that appellant believed that she might harm someone else if "she felt she was being controlled or manipulated." The Board finds, however, that the Office reasonably referred appellant to vocational rehabilitation given the finding of Dr. Fink that she could work anywhere but the employing establishment. Dr. Schaaf has not adequately explained the basis for her conclusion that vocational rehabilitation would not benefit appellant in view of Dr. Fink's findings. Additionally, her finding that appellant "could potentially be harmed" by vocational rehabilitation is a fear of future injury and, as discussed above, is not compensable.[20] Consequently, Dr. Schaaf's opinion is insufficient to overcome the weight accorded Dr. Fink's opinion as the impartial medical examiner.

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[18] *Id*.

[19] *See Manuel Gill*, 52 ECAB 282 (2001).

[20] *Id*.

On June 23, 2004 appellant met with Ms. Cottingham, a vocational rehabilitation counselor. She told the rehabilitation counselor that she would "hurt her" if she "was pushed too far." Ms. Cottingham recommended against further rehabilitation efforts. On July 22, 2003 appellant, through her attorney, refused vocational rehabilitation based on the opinion of her attending physician. On July 23, 2003 the Office referred appellant to a new rehabilitation counselor, Mr. Gann. The Office advised her that it had terminated Ms. Cottingham's services because she had sought employment for her with the employing establishment. In a letter dated July 23, 2003, the Office acknowledged appellant's refusal to cooperate with vocational rehabilitation and informed her that she had 30 days to participate in such efforts or provide good cause for her refusal. The Office notified her that her compensation would be reduced if she did not comply with its instructions. In a response dated August 13, 2003, appellant's attorney contended that the Office improperly switched rehabilitation counselors. The Office, however, properly terminated Ms. Cottingham's services as she requested information about placement with the employing establishment against the Office's explicit instructions. The attorney also submitted progress reports dated June 18 and July 30, 2003 from Dr. Schaaf; however, these progress reports merely summarized treatment sessions and did not contain an opinion on disability. These progress reports are insufficient to meet appellant's burden of proof to show good cause for failing to participate in vocational rehabilitation.

Appellant failed to cooperate in the early stages of vocational rehabilitation. The Act's implementing regulation provides that when an employee fails to participate in the early stages of vocational rehabilitation, it cannot be determined what his or her wage-earning capacity would have been had there been no failure to participate.[21] It is thus assumed, absent evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity.[22] Appellant did not submit any evidence to refute this assumption. The Office therefore properly found that she had no loss of wage-earning capacity and reduced her monetary compensation to zero.

LEGAL PRECEDENT -- ISSUES 2 & 3

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[23] the Office's regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal arguments not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[24] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[25]

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[21] 20 C.F.R. § 10.519(b).

[22] 20 C.F.R. § 10.519(c).

[23] 5 U.S.C. § 8128(a).

[24] 20 C.F.R. § 10.606(b)(2).

[25] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

The medical evidence submitted by appellant in support of her October 8, 2003 request for reconsideration does not constitute relevant and pertinent new evidence not previously considered by the Office. Appellant submitted numerous medical reports and progress notes already of record; however, the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[26]

Appellant also submitted progress notes from Dr. Schaaf dated August through December 2003. The progress notes, however, do not address the relevant issue of whether appellant has established that she had good reason for failing to cooperate with vocational rehabilitation. 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.[27]

Appellant, through her attorney, contended that the impartial medical examiner, Dr. Fink, did not address whether she could participate in vocational rehabilitation. He further argued that Dr. Schaaf found appellant disabled from all employment and that the initial rehabilitation counselor found that she was not a suitable candidate for rehabilitation. Appellant's attorney's arguments fail to show that the Office erroneously applied or interpreted a point of law and are repetitious of his arguments previously considered by the Office. Evidence which repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.[28]

As appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered or submitted relevant and pertinent new evidence, the Office, in its February 5, 2004 decision, properly refused to reopen appellant's claim for a review on the merits.

ANALYSIS -- ISSUE 3

In support of her June 3, 2004 request for reconsideration, appellant submitted progress notes from Dr. Schaaf dated February 18, March 10, April 14 and May 12, 2004, who described her current symptoms and found her condition unchanged. As Dr. Schaaf did not address the relevant issue of whether appellant could participate in vocational rehabilitation, her progress notes are not relevant to the issue at hand.[29]

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[26] *Arlesa Gibbs*, 53 ECAB 204 (2001).

[27] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[28] *Id*.

[29] *Judy L. Kahn*, 53 ECAB 321 (2002).

Appellant further resubmitted progress notes from Dr. Schaaf dated June 2001 through January 2004. As this evidence duplicated that already of record, it has no evidentiary value and is insufficient to warrant a reopening of appellant's claim on the merits.[30]

In a letter dated April 6, 2004, Ms. Cottingham, the initial rehabilitation counselor, indicated that she had not felt threatened by appellant during their meeting. Ms. Cottingham's letter does not address the relevant issue of whether appellant had good reason for failing to participate in vocational rehabilitation and thus does not constitute a basis for reopening her case.[31]

In a report dated March 24, 2002, Dr. Schaaf opined that appellant was disabled from work due to her anxiety disorder. She maintained that if appellant were supervised she would "perceive that she is being controlled or harassed, her symptoms will increase and she will be unable to perform her job duties." Dr. Schaaf stated that she could not participate in vocational rehabilitation because she would believe it was an attempt at control and "would not benefit due to her distrust and resistance." She also noted that the impartial medical examiner, Dr. Fink, found that if appellant resumed employment she might be "subject to similar reactions in similar situations." Dr. Schaaf's March 24, 2002 opinion, however, is cumulative in nature as she previously expressed this opinion in her prior report dated April 23, 2003; therefore, her report does not constitute relevant and pertinent new evidence.[32]

As appellant has not shown that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered or submitted relevant and pertinent new evidence, the Office, in its August 9, 2004 decision, properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly reduced appellant's monetary compensation to zero under 5 U.S.C. § 8113(b) of the Act effective July 10, 2003 on the grounds that she did not cooperate with the preliminary stages of vocational rehabilitation. The Board further finds that the Office, in its February 5 and August 9, 2004 decisions, properly denied her requests for further review of the merits of her claim under section 8128.

[30] *Vincent Holmes*, 53 ECAB 468 (2002).

[31] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[32] *Patricia G. Aiken*, 57 ECAB ___ (Docket No. 06-75, issued February 17, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 9 and February 5, 2004 and September 10, 2003 are affirmed.

Issued: July 10, 2007
Washington, DC

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

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

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