

FACTUAL HISTORY

On July 8, 2005 appellant, then a 50-year-old traffic management specialist, filed an occupational disease claim (Form CA-2), alleging that she sustained stress in the performance of duty on or before February 1, 2005.

In a September 21, 2005 letter, the Office advised appellant of the type of factual and medical evidence needed to establish her claim. It emphasized the need for a detailed description of the employment factors alleged to have caused or contributed to the claimed emotional condition. The Office also requested a rationalized statement from appellant's attending physician explaining how and why the identified work factors would cause the claimed condition. Appellant was afforded 30 days in which to submit such evidence.

In an October 6, 2005 report, Dr. Ronald V. Kidd, an attending licensed clinical psychologist, related appellant's account of discrimination, unfair treatment, sexual harassment and false accusations at the employing establishment on unspecified dates. He diagnosed dysthymic disorder, a recurrent major depressive episode, generalized anxiety disorder and panic disorder.

In an October 13, 2005 letter, the employing establishment asserted that appellant filed her claim to recoup 80 hours of sick leave used from February 22 to March 7, 2005 for a stress-related absence. The employing establishment stated that, due to a "personality conflict with another employee ..., [appellant] was reassigned to another position" with similar duties in a different division.

In a November 2, 2005 letter, appellant attributed her stress and panic attacks to a subordinate being promoted over her in August 1997, management harassment and reprisals due to an Equal Employment Opportunity (EEO) settlement, being made to work the second shift in December 2003 to favor a coworker, alleged management favoritism shown to this coworker on or about April 16, 2004, false accusations that appellant threatened this coworker, anxiety that the false accusations would result in revocation of her security clearance, a fear that appellant would lose her job and a July 7, 2004 reassignment.

By decision dated January 10, 2006, the Office denied appellant's emotional condition claim on the grounds that she failed to establish any compensable factors of employment. It accepted as factual that appellant disliked working the second shift in December 2003 and that she was afraid she would be terminated. The Office found that the assignment of work was an administrative matter not in the performance of duty and that no error or abuse was shown. It also found that appellant's fear that she would lose her job was self-generated and noncompensable. The Office further found that she did not establish that she was harassed, falsely accused of threatening a coworker or that the coworker was favored over her.

In a letter dated and postmarked February 10, 2006, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review.

By decision dated March 15, 2006, the Office denied appellant's request for a hearing on the grounds that it was untimely filed. It found that her request for a hearing was postmarked on

February 10, 2006 more than 30 days after issuance of the Office's January 10, 2006 decision. The Office additionally denied appellant's request for a hearing on the grounds that the issues involved could be addressed equally well by requesting reconsideration and submitting new evidence establishing that she sustained an injury in the performance of duty.

In a September 7, 2006 letter, appellant requested reconsideration. She submitted January 31 and February 28, 2005 letters from Dr. Kidd that did not mention work factors. Appellant also submitted a duplicate copy of Dr. Kidd's October 6, 2005 report.

By decision dated December 8, 2006, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a review of the case on the merits. It found that appellant's letter failed to provide relevant factual evidence regarding the critical issue of performance of duty. The Office further found that Dr. Kidd's letters were irrelevant as appellant had failed to establish any compensable factors of employment.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.² The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.³

ANALYSIS -- ISSUE 1

The Office denied appellant's claim by January 10, 2006 decision. Appellant's letter requesting an oral hearing was postmarked February 10, 2006, more than 30 days after the January 10, 2006 decision. Thus, the Office properly found that appellant's hearing request was not timely filed under section 8124(b)(1) of the Act and that she was not entitled to a hearing as a matter of right.

The Office then exercised its discretion and determined that appellant's request for a hearing could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the claimed emotional condition was causally related to her federal employment. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. §§ 10.616, 10.617.

³ *Claudio Vasquez*, 52 ECAB 496 (2002).

facts.⁴ The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for a review of the written record was proper under the law and facts of this case.

LEGAL PRECEDENT -- ISSUE 2

To require the office to reopen a case for merit review under section 8128(a) of the Act,⁵ section 10.606(b)(2) of Title 20 of the Code of Federal 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.⁶ Section 10.608(b) provides that, when an application for review of the merits of a claim 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.⁷

In support of his request for reconsideration, the claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁸ The appellant need only submit relevant, pertinent evidence not previously considered by the Office.⁹ When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹⁰

ANALYSIS -- ISSUE 2

The Office denied appellant's emotional condition claim by decision dated January 10, 2006 finding that she submitted insufficient evidence to establish any compensable factors of employment. Appellant then requested reconsideration by September 7, 2006 letter.

The critical issue at the time of the last merit decision in the case was whether appellant established any compensable factors of employment. To be relevant, the evidence submitted in support of the September 7, 2006 request for reconsideration must address that issue. Appellant's letter requesting reconsideration is insufficient to establish her allegations as factual. Therefore, it is irrelevant to the claim. Similarly, the letters and report from Dr. Kidd, an attending licensed clinical psychologist, are irrelevant as they do not contain factual evidence

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2) (2003).

⁷ 20 C.F.R. § 10.608(b) (2003).

⁸ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁹ *See* 20 C.F.R. § 10.606(b)(3). *See also* *Mark H. Dever*, 53 ECAB 710 (2002).

¹⁰ *Annette Louise*, 54 ECAB 783 (2003).

establishing any compensable employment factors. The Board has held that the submission of evidence irrelevant to the issue involved is not a basis for reopening a case.¹¹

Thus, appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act, because she did not 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.

CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing. It further finds that the Office properly denied appellant's request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 8 and March 15, 2006 are affirmed.

Issued: July 26, 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

¹¹ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).