

FACTUAL HISTORY

On February 13, 2004 appellant, then a 40-year-old former transit mail expeditor, filed an occupational injury claim, Form CA-2, alleging that she sustained emotional distress, fatigue, depression and anxiety as a result of her duties. She alleged that she encountered opposition from drivers, coworkers and supervisors that interfered with her ability to timely complete her job duties. Appellant detailed eight specific instances of alleged abusive or stressful coworker interaction. The employing establishment controverted the claim, noting that appellant had resigned in February 2001 prior to her removal for being absent without leave. It stated that appellant was rehired as a temporary employee in July 2002 and removed again in November 2002 for being absent without leave.

By decision dated May 3, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she had a diagnosed medical condition or that the claimed condition was causally related to the accepted employment factor, which consisted of a single verbal confrontation by a coworker.

Appellant requested an oral hearing on this decision, which was held on February 1, 2005. In a May 4, 2005 decision, the Office hearing representative found that appellant's compensable employment factors included "verbal harassment and stress arising from her attempts to meet the demands of her job" as a mail expeditor from 1998 to her resignation in February 2001. He found that she did not establish any compensable factors from her period of employment as a temporary employee from July to October 2002. The hearing representative found that, although appellant had testified that she resigned in 2001 for employment-related reasons, the contemporaneous medical evidence made no mention of her employment situation. He reviewed reports dated June 11, 2004 and March 14, 2005 from Dr. Lester Debbold, a Board-certified psychiatrist, and found that they were not adequately rationalized. The hearing representative stated that Dr. Debbold "attempted to relate the present emotional disability to the period of employment as a mail expeditor, by virtue of a delayed awareness of its connection to the employment." He noted that Dr. Debbold's report, which diagnosed depression and post-traumatic stress disorder, was made more than three years after appellant resigned as a mail expeditor and that appellant had received no treatment for her condition in the interim. The hearing representative found that Dr. Debbold's speculation that "the delayed onset of work-related stress represented a repressed behavior pattern learned from childhood" did not "completely explain the fact that, according to [appellant's] own testimony, her complaints to her psychotherapist at the time of the compensable work situation involved her family stressors." He concluded that appellant had not established a causal connection between her federal employment and her diagnosed condition.

On July 9, 2005 appellant requested reconsideration of the Office hearing representative's opinion and submitted medical records related to her psychiatric treatment from 2000 to 2001 and 2004. On July 18, 2005 the Office received additional documentation, including a portion of a June 22, 2005 report from Dr. Jeffrey Kahn, a psychologist, and a September 1, 2000 psychiatric intake form.

By decision dated October 4, 2005, the Office denied modification of the hearing representative's decision on the grounds that the newly submitted psychiatric records were not

signed by a physician or were illegible and support her claim. On October 9, 2005 appellant requested reconsideration on the basis of Dr. Kahn's June 22, 2005 report, which had not been considered in the Office's decision. She submitted a full copy of Dr. Kahn's report.

By merit decision dated January 25, 2006, the Office denied modification of its prior decision. The Office found appellant's claim lacked credibility and that Dr. Kahn's medical opinion did not establish that her current psychological diagnosis was the result of the accepted employment factors. It noted that Dr. Kahn based his finding of causation on several events that had not been accepted by the Office, including general sexual harassment and some specific coworker confrontations. The Office stated that to perfect her claim appellant was "required to provide medical evidence contemporaneous to the period from 1998 to 2001 showing that she sought treatment specifically for the compensable employment factors" or a "comprehensive report based on the accepted compensable factors with a complete and accurate factual and medical history supported by sound medical rationale."

On August 21, 2006 appellant, through her attorney, requested reconsideration of the Office's January 25, 2006 decision on the basis of legal arguments not previously considered by the Office. Counsel contended that, because appellant suffered from a latent disability that did not manifest itself until she began her nonfederal employment in 2003, the reports from Dr. Debbold and Dr. Kahn were contemporaneous evidence of her latent condition. He argued that the Office had "improperly and unreasonably" demanded medical evidence from 1998 to 2001 to diagnose her condition at the time. Counsel also argued that, while appellant's condition in 2000 and 2001 was partially caused by her family situation, the Federal Employees' Compensation Act did not bar compensation when an employment injury was partially caused by nonemployment factors.

By decision dated November 15, 2006, the Office denied further review of the merits of appellant's case. The Office found that appellant's latent disability argument was not new and that it had been discussed in the context of "delayed awareness," which had been considered and rejected in decisions dated May 4 and October 4, 2005 and January 25, 2006. These decisions stated that the evidence did not substantiate the claim of latent disability as records of appellant's psychiatric care in 2000 did not contain even a minimal reference to her employment difficulties. Because appellant had not established causal relationship, the Office was under no obligation to further develop her claim. Finding that appellant had presented no new evidence or arguments, and had not established an error of fact or law, the Office denied further merit review of the claim.

LEGAL PRECEDENT

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.¹ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously

¹ 5 U.S.C. § 8128(a).

considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.² 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.³

When reviewing an Office decision denying 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.⁴

ANALYSIS

As appellant presented no relevant and pertinent new evidence in her August 21, 2006 request for reconsideration, the issue to be resolved is whether she established that she presented a new legal argument or that the Office erroneously applied or interpreted a specific point of law.

The Board finds that appellant's latent disability argument was not new. In the May 4, 2005 and January 25, 2006 decisions, the Office addressed the argument that appellant's diagnosed post-traumatic stress disorder, which began in 2003, was caused by experiences at the employing establishment from 1998 to 2001. It also considered the argument that she was not aware of the psychological impact of the accepted employment factors until they began affecting her in 2003. The fact that the Office used the term "delayed awareness" rather than "latent disability" is not material to whether the underlying argument has been considered by the Office, nor is it relevant that appellant did not agree with the analysis the Office used when addressing these issues. For these reasons, the Board finds that appellant is not entitled to further review on the merits of her case under section 10.606(b)(2)(ii) of the Office regulations.

In her August 21, 2006 request for reconsideration, appellant presented arguments that the Office had erroneously applied or interpreted the law as it relates to causation. Specifically, she stated that the Office had "improperly and unreasonably" demanded medical evidence that would establish her psychological condition from 1998 to 2001. Appellant also contended that the Act would cover her emotional condition in that period even if it was caused by both her employment situation and family matters. The Board finds that appellant did not establish error on these points. When finding that appellant had not established a causal relationship, the Office noted that there was no medical evidence from 1998 to 2001 that discussed the accepted factors, but it did not foreclose her claim on that ground alone. In the January 26, 2007 decision, the Office indicated that, even without this evidence, appellant could meet her burden of proof by providing a fully-rationalized medical opinion based on the accepted employment factors. Further, the Office did not state that appellant's case was being denied because her emotional condition was partially caused by her family situation, but because she had not established that it was caused by anything other than her family situation. The Board finds that appellant is not

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ *Leslie M. Mahin*, 55 ECAB 311 (2004).

entitled to further review on the merits of her case under section 10.606(b)(2)(i) of the Office regulations.

Because appellant did not meet any of the statutory requirements for a review of the merits of her claim, the Office properly denied the August 21, 2006 request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 15, 2006 is affirmed.

Issued: July 20, 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