



exposure to lead and asbestos, being denied overtime pay, stress due to union duties, a proposed April 8, 2002 disciplinary suspension for misuse of a government credit card and “negligent and discriminating handling of [her] issues by management.” She submitted an August 31, 2004 report from Penelope A. Klestinski, a licensed clinical social worker, reiterating appellant’s account of events.

In a December 10, 2004 letter, Peter Behrens, an employing establishment official, acknowledged that appellant was exposed to asbestos at work. Regarding the behavior of the male coworker, Mr. Behrens asserted that “management permanently moved the employee of concern to another shop and ... attempted to give [appellant] notice when the coworker may be near her.”

In an April 13, 2005 letter, the Office advised appellant of the additional evidence needed to establish her claim. The Office requested a detailed description of the work factors alleged to have caused the emotional condition. The Office explained that Ms. Klestinski was not a physician under the Act and her report was insufficient to support appellant’s claim.

Appellant submitted June 2002 employing establishment emails and safety reports demonstrating that, from June 11 to 13, 2002, she and her coworkers were improperly exposed to asbestos while removing electrical equipment in vault B-11. Also, the employing establishment’s safety office did not timely report the incident. On December 17, 2002 the Department of Labor’s Occupational Safety and Health Administration issued 14 notices of unsafe or unhealthful working conditions against the employing establishment regarding the June 11 to 13, 2002 asbestos exposures. The violations included that the employer did not use containment and abatement procedures or provide protective clothing. Each violation was categorized as “serious.”

On November 14, 2004 appellant filed an Equal Employment Opportunity (EEO) Commission discrimination complaint based on age, sex, disability and reprisal. She alleged that the employing establishment did not respond appropriately to a situation where a male coworker allegedly became obsessed with her. Appellant submitted an August 25, 2004 email message asserting that the coworker was in her work area on August 13, 2004 and attended a union meeting that she chaired as a steward the previous week. There is no final decision of record regarding this complaint.

In a May 18, 2005 letter, appellant contended that she used her government credit card to pay for unauthorized personal expenses because the employing establishment denied her overtime pay.

By decision dated July 1, 2005, the Office denied appellant’s emotional condition claim on the grounds that fact of injury was not established. The Office accepted as factual that appellant was exposed to asbestos and that the safety office delayed reporting the incident. However, it found that appellant’s stress was not due to the asbestos exposure but to her frustration at how management handled the issue. The Office further found that the disciplinary suspension and overtime pay issues were administrative matters and that no error or abuse was shown to bring them coverage of the Act. It further found that appellant’s union activities were not in the performance of duty. The Office noted that appellant did not establish as factual that a

male coworker posed any threat to her. As appellant failed to establish any compensable factor of employment, the Office did not consider the medical evidence of record.

In a June 13, 2006 letter, appellant requested reconsideration. She stated that she enclosed an employing establishment document listing incidents of hostile behavior by a male coworker. However, this document is not of record. Appellant also submitted a June 21, 2005 report from Ms. Klestinski analyzing her work stressors and how each one affected her mental well being.

By decision dated September 18, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was insufficient to warrant a review of the case on the merits. The Office noted that appellant's June 13, 2006 letter neither raised substantive legal questions nor included new and relevant evidence.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

In support of his or her request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>4</sup> The claimant need only submit relevant, pertinent evidence not previously considered by the Office.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS**

The Office denied appellant's emotional condition claim by decision dated July 1, 2005, finding that she failed to establish any compensable factor of employment. Appellant requested

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (2003).

<sup>3</sup> 20 C.F.R. § 10.608(b) (2003).

<sup>4</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>5</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also* *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>6</sup> *Annette Louise*, 54 ECAB 783 (2003).

reconsideration by a June 13, 2006 letter and submitted a June 21, 2005 report from Ms. Klestinski, a social worker.

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 June 13, 2006 request for reconsideration must address that issue. Appellant's letter and Ms. Klestinski's repetition of appellant's account of events are insufficient to establish appellant's allegations as factual. Therefore, they are irrelevant to the claim. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.<sup>7</sup>

On appeal, appellant asserts that the Office failed to review Ms. Klestinski's June 21, 2005 report. The Office did not mention this report in its September 18, 2006 decision. It did not refer to appellant's June 13, 2006 letter as the only evidence submitted, demonstrating its acknowledgement of additional evidence submitted on reconsideration. There is no indication that the Office failed to review Ms. Klestinski's report.<sup>8</sup>

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. 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 merit review.

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<sup>7</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>8</sup> The Board notes that, in an April 13, 2005 letter, the Office advised appellant that Ms. Klestinski, a social worker, was not a physician under the Act and that her opinion had no probative medical value. 5 U.S.C. § 8101(2); *Phillip L. Barnes*, 55 ECAB 426 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 18, 2006 is affirmed.

Issued: May 14, 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