United States Department of Labor
Employees' Compensation Appeals Board

Z.P., Appellant	)	
and	)	**Docket No. 07-2196**
	)	**Issued: April 2, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Appellant, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 30, 2007 appellant filed a timely appeal from a June 7, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying her request for reconsideration and an October 11, 2006 merit decision of an Office hearing representative denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 26, 2005 appellant, then a 43-year-old distribution window clerk, filed a traumatic injury claim (Form CA-1) alleging that she felt nauseous after Elsa Adriano, a

coworker, told her to "shut-up" in front of a supervisor and another employee. A copy of leave buyback information and an undated accident investigation worksheet were submitted.

In a November 30, 2005 letter, the employing establishment challenged appellant's claim. It noted that appellant was upset she had to work on November 25, 2005 as she had previously requested that day off, but her leave request was denied. The employing establishment stated that appellant completed a sick leave request, told her coworkers and supervisor that she was going home sick, and, as she was closing out her cash drawer, became loud and abusive while bragging that she got to go home while her coworkers had to stay and work. It contended that Ms. Adriano's reaction was to tell appellant to "shut-up."

In a November 26, 2005 statement, Ms. Adriano stated that around 9:00 a.m. on that date, she noticed appellant became hostile after checking the schedule for the day and learning that a coworker had been granted annual leave. She stated that appellant indicated that she was going home sick as soon as their supervisor, Theresa Fleming, arrived at work. Ms. Adriano additionally stated that appellant said that she was not going to take lunch and that she failed to follow supervisor Fleming's instructions to take lunch, claiming to be sick. She stated that, as appellant was closing out, she laughed when saying to her coworkers, "Flor Sy, Ralph Grundy" and herself, that she would "see you guys later. I am going to have a nice rest of the Saturday off with my family." Ms. Adriano stated that she asked appellant to take out the pop out lock from her drawer but appellant refused, saying she did not like the way she was spoken to. She indicated that, when she told Ms. Fleming about the situation, appellant shouted at both Ms. Fleming and herself that she did not like the way she was spoken to.

In a letter dated December 7, 2005, the Office requested additional factual and medical information from appellant. Appellant submitted a November 26, 2005 discharge sheet from a medical center as well as her November 26, 2005 sick leave slip. In a January 11, 2006 decision, the Office denied appellant's claim on the grounds that the factual and medical aspects of the fact of injury determination had not been established.

On January 12, 2006 the Office received a January 3, 2005 statement from appellant. Appellant stated that she was closing out her drawer when Ms. Adriano asked her where the pop-up key for the drawer was and, before she had a chance to answer, Ms. Adriano said "if it's not too much to ask of you." She indicated that she replied "if that's what you think about me, yes, it's too much to ask me." Appellant stated that, while she was waiting in Ms. Fleming's office, Ms. Adriano told Ms. Fleming that appellant had the pop-up key and therefore she (Ms. Adriano) could not work. She advised that, when she was telling Ms. Fleming about Ms. Adriano's attitude and that she did not have the key, Ms. Adriano shouted at her to "shut-up." Appellant stated that Ms. Adriano was not mad at her because of the pop-up key but because she filed a grievance when Ms. Adriano was allowed to come in before her bid time and leave early. She asserted that Ms. Fleming spread the word that she had filed a grievance against Ms. Adriano's hours. Appellant also alleged that Ms. Fleming wanted to fire her. She stated that she felt chest pain and left arm numbness and that Ms. Fleming took her to an emergency room where she was admitted for tests. Appellant submitted emergency room records dated November 26, 2005 that noted a clinical impression of anxiety and possible chest pain.

On January 31, 2006 appellant requested an oral hearing that was scheduled for June 21, 2006. On June 27, 2006 the hearing representative decided to conduct a review of the written record as appellant appeared late for the scheduled June 21, 2006 hearing and the hearing representative was unable to reschedule the hearing for the same hearing docket. Appellant was accorded 15 days to submit additional evidence and argument.

In February 20 and July 9, 2006 statements, appellant set forth her allegations. In her February 20, 2006 statement, she alleged that Ms. Fleming spread the word among her coworkers that appellant was the reason for workplace changes due to grievances she filed. Appellant described a February 9, 2006 work incident with Stella Amaya, a coworker, and asserted that the only way Ms. Amaya would know about things going on at work would be by Ms. Fleming telling that appellant had called the union office. She stated that her coworkers perceived her as being a dangerous and threatening, but alleged that it was she who felt she was in danger. Appellant alleged that Ms. Adriano had collected statements from coworkers saying that appellant's behavior created a hostile environment. In her July 9, 2006 letter, she alleged that Ms. Fleming abused her authority when her annual leave requests on August 3 and November 26, 2005 and February 17, 2006 were denied and she was not timely provided with a copy of such denials. Appellant also noted that a coworker's annual leave request on November 26, 2005 was approved, while hers was not, and argued annual leave should be approved on a first come first serve basis. She stated that there was no evidence to support Ms. Adriano's version of events regarding the November 26, 2005 incident and reiterated that the incident arose over the conversation regarding the pop-up key. Appellant asserted that Ms. Adriano was mad at her because she had called the union about Ms. Adriano's hours and Ms. Fleming had spread privileged information on the grievance to Ms. Adriano. She stated that Ms. Fleming helped all employees to gang up against her. Appellant requested that her hospital bills and expenses related to the November 26, 2005 incident be paid as Ms. Fleming took her to the hospital on November 26, 2005, but failed to provide her with CA-16 treatment authorization. She also indicated that she filed a grievance and Equal Employment Opportunity (EEO) complaint in the matter.

Appellant provided copies of a November 26, 2005 treatment authorization to the Glendale Adventist Occupational Medicine Center; copies of Step 1 grievances against Ms. Fleming concerning discrimination and disparity of conduct and discrimination over schedules and another grievance along with the denial of such grievances dated January 30, 2006 and April 3, 2006; an April 6, 2006 settlement noting in general what an employee is entitled to when timely notification of change of schedules is not given; and copies of several witness statements discussing appellant's behavior and treatment of coworkers and management.

On June 20, 2006 Colleen Street, a union vice president, stated that Ms. Adriano was notified on November 26, 2005 that she could not come in three hours before her scheduled time as a grievance had been filed. She stated that Ms. Adriano was upset causing her outburst toward appellant. Ms. Street noted that management seemed to encourage employees ganging up on appellant and indicated that, in a February 2006 meeting, Postmaster Lisa Bell, Pete Cuadros, manager, and Jean Hill, union president, met with the clerks to let them know that ganging up on any employee was not correct. She also stated that it was apparent that Ms. Fleming leaked privileged information about grievances as employees knew too much information about the grievances.

In an August 1, 2006 statement, Ms. Fleming denied that management asked appellant's coworkers to write statements regarding her behavior toward her coworkers or management. She stated, however, that union representatives told the clerks under her supervision to write the union a letter if they had problems with appellant. Ms. Fleming described the grievances of record and noted that appellant was denied the relief requested as no violations had occurred. She stated that a February 13, 2006 intervention meeting was held about appellant's claims of discrimination and improper treatment by her coworkers and management and noted that all clerks spoken to believed appellant was creating the hostile work environment. Ms. Fleming admitted to telling a clerk that she would be making some changes based on a grievance filed, since she had agreed with the union on the issue. However, she denied purposely leaking information to employees about appellant's grievances. Ms. Fleming noted that, occasionally, while writing responses to grievances on her computer, she would have to leave the computer to attend to other matters and the files would be left besides her computer. She denied deliberately leaving the grievances for anyone to read and noted that appellant believed, if anything was left on a supervisor's desk, it was alright to read. Ms. Fleming denied that Ms. Adriano told appellant to "shut up" because she was no longer allowed to report early and stated that Ms. Adriano was immediately informed that her comment was out of line and inappropriate in the presence of appellant.

In a July 19, 2005 statement, Ms. Bell related that the February 13, 2006 meeting was held with employees and management, with the union in attendance, to discuss appellant's claims of a hostile work environment. She stated that, after several hours of discussion, the general consensus was that appellant created a hostile work environment by taking notes of the actions of other employees and having days of questionable illnesses. Ms. Bell noted that appellant shared her concerns during the meeting, which was focused on Ms. Fleming and how other clerks were perceived to receive certain benefits. She stated that the employing establishment found no evidence of disparate treatment of appellant by Ms. Fleming. Ms. Bell noted that suggestions and solutions to the employees concerns were offered and appellant was offered, but refused, employee assistance. A copy of her February 3, 2006 referral of appellant to the Employee's Assistance Program was submitted along with an April 12, 2005 letter from her referring to an April 7, 2006 traumatic injury claim and her refusal to provide appellant a CA-16 form for retroactive treatment.

In a September 10, 2006 statement, appellant argued that the evidence from Ms. Bell about the CA-16 was not relevant. She stated that Ms. Fleming and coworkers Andera Sanchez and Ms. Adriano harassed her and contended that she neither created nor was ever disciplined for creating a hostile environment. Appellant alleged that she had not been paid overtime pursuant to a grievance settlement, which also demonstrated abuse by the employing establishment. She stated that not all clerks were present during the February 13, 2006 meeting.

By decision dated October 11, 2006, an Office hearing representative denied appellant's claim that she sustained an emotional condition in the performance of duty on the basis that she had not identified any compensable work factors.

In duplicate letters dated December 26, 2006 and January 4, 2007, appellant requested reconsideration. She argued that the Office did not consider the medical evidence she submitted and asserted that Ms. Fleming lied about providing a CA-16 form to the hospital for the

November 26, 2005 work injury. Appellant asked that the Office verify whether a CA-16 was in the file as this would prove whether Ms. Fleming lied about providing the CA-16. She additionally argued that the employing establishment did not provide any corroborating evidence or statement from anyone except Ms. Adriano with respect to why the November 26, 2005 verbal altercation arose. Appellant submitted a duplicative copy of the April 3, 2006 grievance decision, a duplicative copy of two of three pages of appellant's hospital admission on November 26, 2005. In a November 25, 2006 note, Dr. Arbi Ghazarian, a Board-certified family practitioner, noted that appellant had an anxiety reaction after a discussion/argument with the same coworker on November 26, 2005 and April 12, 2006.

By decision dated June 7, 2007, the Office denied appellant's request for reconsideration finding that the evidence submitted in support of the request did not warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[1]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Federal Employees' Compensation Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of her work or her fear and anxiety regarding her ability to carry out her work duties.[2] By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[3]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[4] However, the Board

[1] *D.L.*, 58 ECAB ___ (Docket No. 06-2018, issued December 12, 2006).

[2] *Ronald J. Jablanski*, 56 ECAB 616 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[3] *Id.*

[4] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[5] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[6]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.[7] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[8] The primary reason for requiring factual evidence from the claimant in support of her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[9]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[10]

[5] *See William H. Fortner*, 49 ECAB 324 (1998).

[6] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[7] *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Arthur F. Hougens*, 42 ECAB 455 (1991) and *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence established such allegations).

[8] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[9] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[10] *T.G.*, 58 ECAB ___ (Docket No. 06-1411, issued November 28, 2006); *C.S.*, 58 ECAB ___ (Docket No. 06-1583, issued November 6, 2006); *A.K.*, 58 ECAB ___ (Docket No. 06-626, issued October 17, 2006).

ANALYSIS -- ISSUE 1

Although appellant initially filed a traumatic injury claim for a November 26, 2005 work-related incident, she subsequently alleged that she sustained an emotional condition or anxiety reaction as a result of a number of employment incidents and conditions leading up to the November 26, 2005 work-related incident. The Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

The record reflects that appellant was denied annual leave for November 26, 2005 and on previous occasions. As noted previously, a claimant's reaction to administrative or personnel matters generally falls outside the scope of the Act.[11] However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[12] With respect to appellant's denial of annual leave on November 26, 2005,[13] there is no evidence of error or abuse on the part of the employing establishment and appellant has not submitted any probative evidence otherwise. Furthermore, appellant has not provided specifics as to what happened on the other dates her leave requests were denied. Therefore, the denial of her leave request is not a compensable employment factor.

The record reflects that on November 26, 2005 appellant's coworker, Ms. Adriano, told her to "shut-up" in front of Ms. Fleming. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances; however, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[14] The record reflects that on November 26, 2005 appellant became upset upon learning that a coworker was granted annual leave for that day, while appellant's leave request was denied. Accordingly, she decided to skip lunch and use sick leave for the remainder of the day. Ms. Adriano may have been upset when she learned that a grievance had been filed by the union regarding her scheduled hours. The record also reflects that, as appellant was closing out her drawer, she may have laughed while saying goodbye to her coworkers and she and Ms. Adriano had exchanged some words about a pop-up key for the drawer. The record indicates, and the decision is modified to reflect, that appellant and Ms. Adriano were informing Ms. Fleming about the situation regarding the pop-up key when Ms. Adriano told appellant to "shut-up." Regardless of the motivation behind why Ms. Adriano made the comment, the situation in which the comment occurred cannot be characterized as either a verbal altercation or abuse that rises to the level of a compensable employment factor. There is no evidence that Ms. Adriano's telling appellant to "shut-up" in front of Ms. Fleming was made as a threat, as harassment, or abusively. Rather, it appears to

[11] *Roger Williams*, 52 ECAB 468 (2001).

[12] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[13] *See Joe M. Hagewood*, 56 ECAB 479 (2005) (although the handling of leave requests and attendance matters are generally related to employment, they are administrative functions of the employer and not duties of the employee).

[14] *See Charles D. Edwards*, 55 ECAB 258 (2004).

have arisen out of frustration over the course of events which affected both appellant's and Ms. Adriano's behavior in dealing with each other. Thus, appellant's being told to "shut-up" by her coworker in this circumstance is not deemed a compensable employment factor.

While appellant alleged that Ms. Fleming failed to provide her with a CA-16 treatment authorization on November 26, 2005, she has provided no independent evidence to confirm such allegation or that it would rise to the level of error or abuse in an administrative matter. Additionally, while she indicated that a grievance and an EEO complaint were filed, the record contains no final decision on the matter. The Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[15] Thus, appellant has not established a compensable employment factor in this matter.

Appellant alleged that Ms. Fleming harassed her and wanted to fire her. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[16] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[17] Appellant alleged that Ms. Fleming had spread the word among her coworkers that she was the reason for all the changes in the workplace because of all the grievances she filed. She also alleged that Ms. Fleming abused her administrative authority and that she had filed several grievances in those matters.

The factual evidence, however, fails to support appellant's claim regarding harassment regarding Ms. Fleming. The employing establishment indicated that there was no evidence of disparate treatment of appellant by Ms. Fleming. Additionally, appellant did not provide sufficient evidence of specific incidents she believed constituted harassment.[18] While appellant had filed a number of grievances with respect to the personnel matters, as previously noted, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[19] Additionally although the record indicates that appellant received a settlement on one of her grievances, the evidence does not show that any settlement made any finding adverse to the employing establishment regarding a matter alleged in appellant's claim. With respect to appellant's allegation that Ms. Fleming leaked information about appellant's grievances to coworkers, Ms. Fleming denied leaking any information and only acknowledged mentioning a grievance for which an agreement had been reached with the union.

[15] *James E. Norris*, 52 ECAB 93 (2000).

[16] *See Lori A. Facey*, 55 ECAB 217 (2004).

[17] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[18] *See Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[19] *James E. Norris, supra* note 15.

Appellant also alleged that her coworkers created a hostile work environment and harassed her. The factual evidence also fails to support appellant's claim. The record reflects that appellant filed several grievances and, at a February 13, 2006 intervention meeting, appellant's coworkers generally perceived appellant as creating a hostile work environment for them based on her actions. Additionally, there is no evidence substantiating appellant's belief that management asked appellant's coworkers to write statements regarding appellant's behavior. Rather, the evidence reflects that the union told appellant's coworkers to inform the union if they had problems with appellant. Thus, while there is evidence that tension exists between appellant and her coworkers, there is no specific, substantive, reliable or probative factual evidence to corroborate appellant's allegations. Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[20]

LEGAL PRECEDENT -- ISSUE 2

The Act[21] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[22]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[23]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[24] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[25]

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *Karen K. Levene*, 54 ECAB 671 (2003); *see also Margaret S. Krzychi*, 43 ECAB 496, 502-03 (1992).

[21] 5 U.S.C. § 8101 *et seq.*

[22] 20 C.F.R. § 10.605.

[23] 20 C.F.R. § 10.606.

[24] *Donna L. Shahin*, 55 ECAB 192 (2003).

[25] 20 C.F.R. § 10.608.

ANALYSIS -- ISSUE 2

Appellant requested reconsideration and submitted arguments and documentation in support of her request. However, her arguments and documents do not constitute new, relevant and pertinent evidence or argument.

While she argued that the Office did not consider the medical evidence she submitted, this argument along with the Dr. Ghazarian's November 25, 2006 report is not relevant to the present claim. As previously noted, in order to require the Office to address the medical evidence, a claimant must first establish a compensable factor of employment. As neither the Board nor the Office found that appellant has established a compensable factor, it is not necessary for the Office to review the medical evidence submitted in support of appellant's claim.[26] Appellant additionally argued that Ms. Fleming lied about providing a Form CA-16 to the hospital for the claimed November 26, 2005 injury and requested that the Office verify whether a copy of the CA-16 form was on file. This argument lacks a reasonable color of validity[27] as appellant has not clearly articulated how this relates to any alleged compensable employment factor. Furthermore, appellant had previously alleged that Ms. Fleming did not provide her with a CA-16 form.[28] With regard to appellant's argument that the employing establishment relied on Ms. Adriano's version of why the verbal altercation arose on November 26, 2005, the Board notes that this was previously addressed and the alteration was found to have arisen when appellant and Ms. Adriano were informing Supervisor Fleming about the situation regarding the pop-up key. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[29]

Appellant also did not submit any relevant and pertinent new evidence not previously considered by the Office. She submitted duplicative copies of the April 3, 2006 grievance decision and a duplicative copy of two of three pages of her hospital admission on November 26, 2005. However, such evidence does not constitute a basis for reopening a case.[30] Although Dr. Ghazarian's November 25, 2006 report was new, as previously stated, it is not relevant as appellant has not established a compensable employment factor in this case.

The Board thus finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.

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[26] *See Margaret S. Krzycki*, *supra* note 20.

[27] *See John F. Critz*, 44 ECAB 788, 794 (1993).

[28] *See J.P.*, 58 ECAB ___ (Docket No. 06-1274, issued January 29, 2007) (evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case).

[29] 20 C.F.R. § 10.606(b)(2).

[30] *See supra* note 28.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on June 7, 2007.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated June 7, 2007 and October 11, 2006 are affirmed.

Issued: April 2, 2008
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