United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 08-450**
	)	**Issued: December 19, 2008**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Mather, CA, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument September 17, 2008

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 5, 2007 appellant filed a timely appeal from the September 7, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the issue. The Board also has jurisdiction to review the Office's September 27, 2007 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied a merit review of its June 15, 2006 decision approving $5,189.00 in attorney fees.

FACTUAL HISTORY

On February 2, 2006 appellant, then a 53-year-old air traffic control specialist, filed a claim alleging that her elevated blood pressure, among other conditions, was a result of stress at

work. She submitted an 18-page statement to support that her elevated blood pressure was a direct result of work-related stress due to her supervisors and other employees "attempting to make me feel that I was inadequate in the performance of my duties." Appellant attributed her condition to her supervisor, Marty Clark, who she stated made clear that he did not like her and who was extremely demeaning "and always made it very clear that he was supervisor and I was the peon worker." She alleged that Mr. Clark and controllers, Mark Thacker, Mike Witte and Mike Donnelly, picked on her, ridiculed her and created an unpleasant work environment. Mr. Thacker allegedly opened a drawer into her groin when she was standing there and opened cabinets into her face when she passed by. Because they parked their cars near hers, she suspected the men of putting nails into her tires on numerous occasions. Appellant stated that the men chewed tobacco and "someone" spit into her Cleveland Browns cup. When she complained, her red plastic drinking cup disappeared. Two to three times a week, appellant stated, someone unscrewed the tops of her water bottles and turned them upside down in her tote bag so they would leak all over her sweater and books.

Appellant stated that in November 2001 Mr. Clark was telling her what to do with each aircraft to meet the three-mile separation standard for Air Force One. She knew there was no such standard and did things she deemed of greater priority before following Mr. Clark's instructions. Mr. Clark then challenged her about her delay in following his instructions and took her off her position. He called her into the conference room and for 52 minutes he "berated" her with statements like "I was n[o]t worth the money they paid me! I was nothing special! Supervisors did n[o]t have confidence in me." Appellant contended that Mr. Clark acted inappropriately toward her. She considered the rebuke unwarranted and unfair.

Appellant stated that in January 2003 Mr. Witte turned her in for doing a bad job while working the Delta Sector. During the subsequent investigation, she began having the same symptoms she had when Mr. Clark berated her in 1999. Appellant stated that, from January 2003 to December 2004, Mr. Witte complained of her job performance 13 times. Each time an investigation followed and she was exonerated of all charges. Appellant felt as though her coworkers were becoming distrustful of her job performance due to the shear number of charges and investigations, which unfairly jeopardized her reputation.

Appellant described an incident in February 2003 in which Dave Brown, a controller, failed to "point out" that an aircraft he was monitoring had entered her airspace. She stated that Mr. Clark started yelling at her "That's right, take a point out then run over him!" Appellant felt that Mr. Clark left her solely to blame for the incident, though she was found to be without fault. "This was getting very old," she stated. "Even though I was always exonerated of the false accusations against me, nothing was ever done to any of these individuals to prevent this constant mistreatment." Appellant described another situation in which Mr. Thacker failed to give a "point out" and blamed her for his deficiency. She described several other incidents in which complaints about her performance were investigated. Appellant was exonerated, but management did nothing about the person who made the complaint.

Appellant described an incident on July 31, 2003 in which Mr. Clark approached her with clenched fists, bulging eyes and a red face and told her he had a few things to get off his chest. She was afraid he was going to hit her. In December 2003, appellant stated that Messrs. Witte, Thacker and Donnelly made derogatory remarks about her job performance, manipulated the

break board, intentionally passed her for breaks, made fun of her and mimicked her in a high voice.

Appellant described how one coworker told her there was a group of people out to get her, and how another coworker told her that others were listening to a tape recording of a control room conversation in which disparaging remarks were made about her. She also described how others manipulated the Controller-in-Charge (CIC) assignment to avoid passing it to her, causing her to miss out on a great deal of differential pay.

Appellant stated that on September 14, 2004 Mr. Witte said the following to her in front of everyone: "You are so irritating. You can[no]t control traffic. You just do n[o]t get it." She stated that he was yelling at her.

Appellant described an incident on October 12, 2004. She was working a very busy sector and having difficulty. Appellant stated that Mr. Donnelly began laughing at her, rolling his eyes, smirking with his hand over his mouth and pointing at her. She described another incident on December 9, 2004 in which Mr. Donnelly turned her in to Mr. Witte, the CIC, for an operational error regarding wake turbulence separation. Mr. Witte immediately began chanting "deal-o-rama." Managers reviewed a reenactment, which appellant explained was a big deal, something more than just listening to event on the recorder. It was concluded that there was no error.

Appellant explained how this treatment affected her physically and emotionally. She eventually applied for retirement, effective April 1, 2005.

The Office asked the employer to provide comments from a knowledgeable supervisor on the accuracy of appellant's statement. The employer submitted a March 9, 2006 statement from David Dodd, Mr. Clark's first-line supervisor and appellant's second-level manager during the time in question. Mr. Dodd stated that his duties included general oversight of the supervisors, controllers and the operation. He had several one-on-one meetings with appellant about her concerns, which he investigated, but he stated that her complaints were often general in nature, so it was difficult or impossible to substantiate her allegations. Mr. Dodd stated that Mr. Clark treated all employees in an equitable and fair manner. He stated that appellant never complained to him about Mr. Clark, and he never saw Mr. Clark behave in a demeaning manner toward her. Mr. Dodd never saw anyone park near or tamper with appellant's car. He stated two individuals at work did chew tobacco, but they were not those cited in appellant's statement. Mr. Dodd stated that appellant was not singled out about her performance: "We constantly review and critique employees' performance. This is a daily occurrence that involves all employees." Mr. Dodd knew of no instance of other controllers entering her airspace. He explained that, if such an event occurred, it would have to be investigated and a report would be filed, and he would have been the person to investigate and generate the report. Mr. Dodd stated that appellant was accorded CIC assignments in an equitable manner and as mandated by union contract. This was ensured by tracking the number of hours each controller acted as CIC. Mr. Dodd noted that, in his duties as the quality assurance manager, he conducted the full review (reenactment) of the separation incident appellant described. He explained that it was appellant

who initiated the review by informing her supervisor that she thought she had an operational error. The review showed no such error. Mr. Dodd concluded:

> "[Appellant] was always treated in a fair and equitable manner. Management at times bent over backward to accommodate her various requests. During the time I worked with [her], I never observed discrimination or harassment by either FAA [Federal Aviation Administration] management or her coworkers. I had several conversations with [appellant] where I indicated the fact that I did not see anyone treating her in a less than satisfactory manner."

A December 22, 2004 statement from Kelley R. Althouse, Operation Supervisor, confirmed Mr. Dodd's account that it was appellant who self-reported the error on December 9, 2004. When no error was found, Ms. Althouse asked appellant why she reported an error if she thought there was none. Appellant replied that she thought that "the guys were going to report it." Ms. Althouse stated that at no time did she observe anyone harass appellant.

Appellant submitted documents relating to her complaint with the Equal Employment Opportunity (EEO) Commission.

In a decision dated March 31, 2006, the Office denied appellant's claim for compensation. It found that she failed to establish a compensable factor occurring in the performance of duty.

In a decision dated June 15, 2006, the Office approved $5,189.00 in attorney fees. It found that the services were of the type reasonably performed in connection with a workers' compensation claim and the file indicated the services were in fact performed. The Office noted that appellant received several invoices indicating that additional services were being performed, and she did not contest them until her claim was denied. It found that appellant appeared to agree to pay for the services by not contesting them when she received the invoices. The Office added that the denial of her claim did not, in itself, establish that the services were not performed or were unreasonable or inappropriate.

Appellant requested reconsideration of the Office's March 31, 2007 decision. She contended that Mr. Dodd worked on the opposite side of the building from where she and Mr. Clark worked, had no actual duties, was not Mr. Clark's supervisor and could not possibly have any firsthand knowledge of her claims. Appellant asserted that Mr. Clark and Mr. Dodd were best friends and drinking buddies. She alleged that Mr. Clark denied her over $400.00 in CIC pay. Appellant submitted a CIC tracking sheet and a note indicating a correction was made to her CIC hours. She attacked the credibility of Ms. Althouse, stating that the incident on December 9, 2004 occurred at approximately 9:40 a.m. and that Ms. Althouse did not report for duty until 10:00 a.m. that day and was not present at the time of the incident. Appellant emphasized that she did not turn herself in for an operational error. She noted that Mr. Clark denied multiple leave and familiarization travel requests and that union representatives went over his head to have her leave approved. She claimed that she was first or higher up on the request list. Appellant also argued that her break time was changed more than that of other employees. She stated that the employer's refusal to reassign her to staff duties violated the union contract. Appellant added that she had repeatedly asked for alternative placement.

The Office received a January 31, 2005 affidavit that Mr. Clark provided to special agents. Mr. Clark stated that he no longer supervised appellant because he moved out of that area to avoid interaction with her, to avoid conflict. He denied ever making sexist comments in the workplace, ever stating that a supervisor had a dimpled butt, ever treating any employee differently based on gender, ever verbally berating appellant, ever promoting misconduct and antics directed at appellant because of her gender, or ever yelling or behaving in a condescending way toward her. Mr. Clark acknowledged that he did tell appellant he had a bone to pick with her when he heard that she was telling other employees that he had "submarined" her chances for promotion: "She became upset and immediately got a union rep over the matter." He denied treating male and female employees differently as to leave or breaks or other perquisites or scheduling. Mr. Clark denied ever ridiculing and laughing at appellant's complaints related to harassment and discrimination. He denied ever delaying the timing of appellant's approved breaks or assignment and leave requests because of her gender. Mr. Clark denied ever treating female employees differently when making shift assignments or making vulgar phrases directed at women, including appellant, in the workplace. He also denied ever blocking appellant's access to her car:

> "No, I drive a pick up truck and part between the lines. I usually park in the outside areas of the parking lot to avoid parking conflicts.
>
> "I do not know why [appellant] believes I have discriminated toward her in any manner. I have never had any employee complain about me discriminating against them for any reason. As far as her not getting selected for promotion I was not part of the process nor was I asked for input on the selection. I have not yelled at [appellant] or spoke to her in a condescending manner, this may be her perception [of] my manner of speaking and words I may use.
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> "Appellant started making accusations about me after she was not selected for a promotion."

In a July 15, 2004 affidavit, Daniel Brekke, an air traffic control specialist, stated that he overheard Mr. Clark make negative comments about females: "for example, he has stated that when he was driving on the way to work a female driver cut him off and he described her as '… that bitch….'" On another occasion when he was making mention of the … [a]ir [t]raffic [m]anager … he referred to her as having a 'dimpled butt….'"

In a July 31, 2004 affidavit, Daniel McGuane, another air traffic control specialist, stated that appellant was discriminated against based on sex because familiarization benefits were denied her in an arbitrary manner, time off was denied her when it was available to others, Mr. Clark blocked her car, and breaks were made unusually difficult for her to obtain. He stated that some of the foregoing also occurred with males, but all occurred to appellant on a constant basis. In a February 1, 2005 affidavit, Mr. McGuane added that he believed Mr. Clark treated appellant unfairly: "When he speaks to [her] he speaks to her in a different tone and manner than he does to other employees." He believed that Mr. Clark also discriminated against him for being late and not admonishing others. Mr. McGuane then addressed the parking incident: "Yes, he parked very close to the driver side of her car in the stall so close that she would not be

able to open her door. Mr. Clark drives a large pick up truck and [appellant] drives a small red sports car."

On May 11, 2007 Donald H. Kirby, acting air traffic district manager, responded to appellant's reconsideration request. He advised that Mr. Dodd was in fact Mr. Clark's immediate supervisor for several years and was actively involved in Quality Assurance/ Performance Review functions. Mr. Kirby noted that appellant never filed a grievance about being denied CIC duties or losing CIC premium pay. He rebutted appellant's statement that Ms. Althouse was removed from the area for disciplinary reasons. Mr. Kirby explained that familiarization trips, which allowed controllers to travel via airline jump seats out of the local commuting area for training, were subject to operational needs and staffing limitations. The program was canceled after September 11, 2001, and appellant never filed a grievance about request denials. Mr. Kirby stated that appellant did request reassignment in December 2004, but no vacancies were available,[1] no position could be created, and appellant's medical documentation recommended she be off work.

On May 15, 2007 Dale P. Durbin, program consultant, responded to appellant's request for reconsideration which he stated amounted to no more than an attempt to discredit agency witnesses and consisted of allegations with no basis in fact. He stated that Mr. Dodd was appellant's second-level supervisor during a significant portion of the period in question. Mr. Durbin argued that appellant's response to the administrative action of offering or not offering as assignment warranting CIC pay was not compensable. He denied impropriety in CIC assignments, familiarization training or allocation of mandatory breaks.

Appellant submitted a 10-page reply dated June 14, 2007. Among other things, she took issue once again with Mr. Dodd's statement. Appellant argued that he was not in a position to have any firsthand knowledge of any of the claims under investigation. She also argued that Mr. Kirby was not in any position to make comments and questioned the statement of Mr. Durbin.

In a decision dated September 7, 2007, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

On August 10, 2007 appellant advised the Office that she submitted a request for reconsideration of the June 15, 2006 decision approving attorney fees. She stated that she submitted this request on March 1, 2007.

In a decision dated September 27, 2007, the Office found that appellant's August 10, 2007 request for reconsideration was untimely and failed to present clear evidence of error in the Office's June 15, 2006 decision approving attorney fees. It denied reopening appellant's case for a merit review of the issue.

[1] Mr. Kirby quoted the union contract: "At his/her request, an employee who is temporarily medically or physically unable to perform active air traffic control duties, shall be assigned to other facility duties, to the extent such duties are available."

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[2] provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[4] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[5]

The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[6] 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.[7] The primary reason for requiring factual evidence from the claimant in support of his or 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.[8]

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[9]

ANALYSIS -- ISSUE 1

Appellant attributed her elevated blood pressure and other conditions to both the actions of management, in particular her supervisor Mr. Clark, and the actions of coworkers, primarily

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Id*. at § 8102(a).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Margreate Lublin*, 44 ECAB 945 (1993).

[6] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[7] *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).

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

[9] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

controllers Messrs. Witte, Donnelly and Thacker. The Board will first address the allegations against management.

Appellant has not attributed her emotional condition to the regular or special assigned duties of her position as an air traffic controller. Therefore, she has not alleged a compensable factor under *Cutler*. As to administrative error or abuse her claim against management is not something that workers' compensation generally covers. Any stress or other emotional reaction she might have had to the actions, or inaction, of her supervisors and managers is not compensable absent error or abuse by management.

Appellant alleged instances of error and abuse by Mr. Clark. She reported that he was extremely demeaning to her, picked on her, ridiculed her and generally created an unpleasant environment for her. Appellant must do more than make allegations. She must prove her allegations of error or abuse. Appellant's claims that someone put nails into her tire, spit tobacco into her Cleveland Browns cup, removed her red plastic drinking cup, and unscrewed the tops of her water bottles and turned them upside down in her tote bag. These allegations are very general and not made directly at Mr. Clark or anyone else in management. Appellant did not know who did these things. She did not submit evidence of error or abuse by her managers as to these allegations.

Appellant also described the three-mile separation incident in November 2001, the "point out" incident in February 2003 and the "bone to pick with her" incident on July 31, 2003. Appellant did not establish, however, that Mr. Clark acted inappropriately when he gave her instructions or took her off her position for not following instructions or called her into the conference room. She noted that the rebuke was unwarranted and unfair, but submitted insufficient evidence for the Board to determine that Mr. Clark berated her, much less for 52 minutes. Appellant did not prove that he yelled at her, or if he did, that what he said was inappropriate or constituted verbal abuse.[10] She did not prove that he approached her with clenched fists, bulging eyes and a red face. These are all unsupported allegations of abuse, and as such, do not bring appellant's claim within the scope of the Act.

Appellant alleged that Mr. Clark denied her over $400.00 in CIC pay. While there is some evidence that a correction was made to her CIC hours,[11] there is no proof that Mr. Clark engaged in CIC manipulation or any other kind of error. Superiors might have approved leave that Mr. Clark denied, but appellant did not establish abuse of discretion or other error on the part of Mr. Clark. Management explained that familiarization trips were subject to operational needs and staffing limitations.

Appellant submitted statements from other controllers, Mr. Brekke and Mr. McGuane, but they do not support her claim for compensation. Mr. Clark's description of a female driver who cut him off on the way to work is quite immaterial to appellant's case. Mr. McGuane made very general statements in support of appellant's claim, but he did not explain how he had

[10] The Board has generally held that being spoken to in a raised or harsh voice does not in itself constitute verbal abuse or harassment. *Beverly R. Jones*, 55 ECAB 411, 418 (2004).

[11] It appears she did not work as many CIC hours as she was given credit.

firsthand knowledge or provide enough specifics to establish the general conclusions he reached. It appears his most probative observation relates to the parking incident.

For his part, Mr. Clark denied any misconduct. He denied ever berating appellant or yelling at her or behaving in a condescending way toward her. Mr. Clark denied ever delaying the timing of her approved breaks or treating her differently when making assignment shifts. He provided an affidavit that negates numerous allegations of her claim for compensation. Mr. McGuane disputed Mr. Clark's statement that he never blocked appellant's access to her car, but did not provide specific information as to when such incident took place. Mr. Brekke rebutted Mr. Clark's statement that he never said a supervisor had a dimpled butt. However, his statement does not establish that Mr. Clark directed such remarks towards appellant.

Appellant alleged that management took no action against those who made performance complaints against her. "Nothing was ever done to any of these individuals," she stated, "to prevent this constant mistreatment." Beyond appellant's perception in the matter, the evidence again is not sufficient to establish administrative error. Appellant alleged that the employer's refusal to reassign her to staff duties violated the union contract. But the employer quoted the applicable provision in full and explained that no vacancies were available, no position could be created, and appellant's medical documentation recommended that she be off work.

Appellant also attributed her condition to general rumor and gossip. Someone told her there was a group of people out to get her. Someone else told her other people were listening to a recording that contained disparaging remarks about her. The evidence does not identify the occurrences of these allegations with specificity as to date or identity or individuals involved.[12]

Appellant questioned the statements submitted by Mr. Dodd, Ms. Althouse, Mr. Kirby and Mr. Durbin. However, she bears the burden of proof to establish the essential elements of her claim by the weight of probative evidence. Appellant's effort to impeach the credibility of these statements does not lessen her responsibility to establish a factual basis for her claim through affirmative and convincing evidence.

Having reviewed and considered the evidence of record, the Board finds that appellant has not met her burden of proof to establish error or abuse by management. Appellant has failed to establish that her stress or emotional reaction to Mr. Clark or others in management falls within the scope of workers' compensation. The Board will therefore affirm the Office's September 7, 2007 decision on the issue of administrative error or abuse.

As noted, appellant also implicated the actions of several coworkers, primarily Messrs. Witte, Donnelly and Thacker. The Office did not request any response from these individuals to her allegations. The record contains no statement from Messrs. Witte, Donnelly or Thacker. The Board finds that further development is necessary to secure such evidence from the employer. The Board will therefore set aside the Office's September 7, 2007 decision, in part, and remand the case for further development. The Office should provide the employer with

[12] In *Gracie A. Richardson*, 42 ECAB 850 (1991), the employee asserted that she was devastated by perceptions of coworkers gossiping behind her back and spreading rumors concerning her marital and personal relationships. The Board found that appellant's fear of gossip and rumors was a personal frustration and not compensable.

a statement of appellant's allegations made against these individuals and should request a response from each individual to her allegations. Following such further development of evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."[13]

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. The Office will consider an untimely application only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.[14]

The term "clear evidence of error" is intended to represent a difficult standard.[15] If clear evidence of error has not been presented, the Office should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.[16]

ANALYSIS -- ISSUE 2

Although appellant stated that she submitted a May 1, 2007 request for reconsideration of the Office's June 15, 2006 decision on attorney fees, the record shows no such request. The Board has reviewed the communications between appellant and the Office during this period and does not find a single reference to a May 1, 2007 request. On May 22, 2007, only three weeks after the alleged request, the Office acknowledged receiving two letters requesting

[13] 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.607 (1999).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.c (January 2004).

[16] *Id*. at Chapter 2.1602.3.d(1).

reconsideration, dated March 28 and May 6, 2007. This would have been an opportune moment for appellant to advise the Office that she also submitted a May 1, 2007 request concerning the attorney fees. She did not. Appellant offered no proof, such as a return receipt, to show that she made such a request. Her August 10, 2007 letter is the first evidence of appellant's attempt to seek reconsideration of the attorney fee decision. Appellant's request is therefore considered to be made on that date. Because she did not make this request within one year of the Office's June 15, 2006 decision, the Board finds it untimely. The only question that remains is whether this request shows clear evidence of error in the Office's June 15, 2006 decision.

The Board finds that appellant's request does not show clear evidence of error. Appellant's August 10, 2007 letter simply describes her difficulty speaking to anyone or having her calls returned. She stated that she received another bill from the attorney and noted that she disputed the charges. Appellant noted that she submitted lengthy and voluminous documents to support her claim. Her letter is simply informational. Appellant made no attempt to establish that the Office's June 15, 2006 decision was wrong. She submitted no evidence to show that the Office's approval of attorney fees was clearly erroneous. Because appellant's request does not meet the standard for obtaining a merit review of the attorney fee issue, the Board finds that the Office properly denied her request. The Board will affirm the Office's September 27, 2007 decision.

CONCLUSION

The Board finds that appellant has not established her allegations of administrative error or abuse. The case is not in posture for decision on whether appellant sustained an emotional condition based on her allegations involving her coworkers. The Board also finds that the Office properly denied a merit review of its June 15, 2006 decision approving attorney fees.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside in part. The Office's September 27, 2007 decision is affirmed. The case is remanded for further action consistent with this opinion.

Issued: December 19, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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