

On October 12, 2005 the Office informed her that her May 6, 2002 recurrence claim would be adjudicated as a new occupational disease claim as she had attributed her depression to new factors. In an undated statement received on August 11, 2003, appellant attributed her depression due to having to attend a mandatory sexual harassment training sometime between December 2001 to January 2002; the Office faxing a copy of facts regarding her earlier claim to her supervisor, Mary Lynch, to a fax that was accessible by coworkers; her therapist, Ken Einbinder, had accepted another position and was leaving the counseling area; e-mail messages regarding accounts receivable procedure process upset her; and that her request for a six-month leave of absence was denied.

By decision dated August 8, 2006, the Office denied appellant's emotional condition claim. It found that the evidence of record failed to support that she sustained an emotional condition in the performance of duty.

In a letter dated July 26, 2007, appellant requested reconsideration of the denial of her claim. In support of her request, she resubmitted a September 20, 2002 report by Steven C. Altshuler, Ph.D., licensed psychologist, and a May 2, 2003 report by Shirley McMorris, Ph.D.

By decision dated December 5, 2007, the Office denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulation provide 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.³ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.⁵

ANALYSIS

The only decision before the Board in this appeal is the December 5, 2007 decision of the Office denying appellant's application for review of its August 8, 2006 decision denying her

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2). *See Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ *Id.* at § 10.607(a).

⁵ 20 C.F.R. § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

emotional condition claim. Because more than one year had elapsed between the date of the August 8, 2006 merit decision and the filing of her appeal with the Board on February 25, 2008, the Board lacks jurisdiction to review the merits of appellant's claim.⁶

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 request for reconsideration, which was received on August 1, 2007, must address that issue. However, appellant did not provide any relevant or pertinent new evidence pertaining to this issue.

Appellant submitted duplicate copies of Dr. Altshuler's September 20, 2002 report and Dr. McMorris' May 2, 2003 report, which were already of record and were previously reviewed by the Office. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁷ The Board, therefore, finds that these reports are insufficient to warrant reopening appellant's claim for further merit review.

The evidence submitted by appellant 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. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.⁸

CONCLUSION

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

⁶ 20 C.F.R. § 501.3(d)(2). See *Linda Beale*, 57 ECAB 429 (2006).

⁷ *M.E.*, 58 ECAB ____ (Docket No. 07-1189, issued September 20, 2007); *Patricia G. Aiken*, 57 ECAB 441 (2006).

⁸ See 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB ____ (Docket No. 07-2265, issued April 28, 2008); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 5, 2007 is affirmed.

Issued: December 12, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board