

In response to an April 6, 2004 letter from the Office requesting additional information, appellant submitted an undated statement. She alleged that four days before the incident her supervisor, Ann Arnold, directed her not to punch her time clock every time she moved from one operation to the next and that she had followed these instructions. On the day of the incident, Ms. Arnold approached her at the window and stated that her time was messed up. Appellant then went to Ms. Arnold's office and stated that she had followed her instructions, to which Ms. Arnold replied that she would not submit the time sheets and became out of control and began screaming. She requested representation from her union steward, who joined her in a meeting with Ms. Arnold and another acting supervisor. After the meeting, appellant alleged that she was crying and had been completely shaken, humiliated and emotionally abused and went to the hospital for medical treatment. A few days later, Ms. Arnold dropped the complaint and no disciplinary action was taken against appellant.

By decision dated May 12, 2004, the Office accepted that on March 27, 2004 appellant's supervisor, Ms. Arnold, yelled at her, telling her to go home and go to her office. However, it did not accept that appellant's supervisor yelled at her while she was working at the window. The Office denied the claim on the grounds that appellant did not provide medical evidence to establish that she had a work-related condition.

On March 24, 2005 appellant, through her representative, requested reconsideration on the merits.

By decision dated September 26, 2005, the Office denied modification on the grounds that appellant did not submit rationalized medical opinion addressing the causal relationship between the accepted work event and her condition. It discussed a February 28, 2005 medical report from appellant's treating physician, finding that the physician did not indicate an accurate knowledge of the work events and did not explain how the events caused the reported stress symptoms.

On August 15, 2006 appellant, through her representative, requested reconsideration on the merits.

By decision dated November 1, 2006, the Office modified the prior decisions to accept that on March 27, 2004 discussions took place between appellant and her supervisor involving her timecard and the process of clocking in and out between operations and the discussion became loud. It also accepted that appellant was upset and went to the emergency room where she was treated for palpitations and subsequently released. However, the Office denied the claim on the basis that the incident did not occur within appellant's performance of duty, but rather took place within the purview of the supervisor and subordinate relationship. Moreover, it found that there was no indication that appellant's supervisor acted erroneously in exercising her supervisory authority.

On November 29, 2006 appellant, through her representative, requested reconsideration on the merits.

By decision dated January 4, 2007, the Office denied merit review on the grounds that appellant did not raise substantial legal questions or submit new and relevant evidence.

On January 19, 2007 appellant, through her representative, requested reconsideration of the merits. She also submitted an undated memorandum from Ms. Arnold directing her to use Form A-1260 to document her moves from window to box mail and to make a move on clock when she was finished with box mail and moving to window services.

By decision dated June 28, 2007, the Office denied modification on the basis that there was no evidence that appellant's supervisor acted erroneously in dealing with her while carrying out supervisory responsibilities and, thus, the incident was not within her performance of duty.

On May 8, 2008 appellant requested reconsideration of the merits. She submitted an April 2, 2004 memorandum from Marty Gira, a manager at the employing establishment, providing guidance to appellant as to when she was required to use the time clock.

By decision dated May 20, 2008, the Office denied merit review finding that the new evidence submitted was repetitive and addressed facts already established in the case.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).²

To require the Office to reopen a case for merit review under section 8128(a) of the Act,³ the Office's regulations provide that the evidence or argument submitted by 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.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 on the merits.⁵

ANALYSIS

Appellant did not raise any relevant legal argument, nor did she claim that the Office erroneously applied a specific point of law. Thus, the issue is whether she submitted relevant and pertinent new evidence. In support of her request for reconsideration, appellant submitted a

¹ 5 U.S.C. § 8128(a).

² *Annette Louise*, 54 ECAB 783, 789-90 (2003).

³ 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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

memorandum dated April 2, 2004 from Ms. Gira, a manager at the employing establishment, instructing her on how to record her time.

The Office previously accepted that on March 27, 2004 appellant's supervisor, Ms. Arnold, yelled at her about time clock procedures and that she became upset and sustained a stress condition. Thus, the only pertinent issue is whether the employing establishment acted erroneously or abusively, such that the event would be considered within appellant's performance of duty and compensable under the Act.

The Board finds that the April 2, 2004 memorandum does not address the relevant issue of abuse or error on the part of the employing establishment, but rather relates to the facts surrounding the March 27, 2004 event, namely that appellant was provided instructions regarding clocking in and out procedures while moving between operations, which the Office already accepted.⁶ Moreover, the memorandum is cumulative in nature as appellant previously submitted an undated memorandum from her supervisor, Ms. Arnold, with similar directions regarding clocking procedures.⁷

Therefore, the Board finds that appellant did not submit relevant and pertinent new evidence and, thus, did not establish a basis for reopening her claim.

CONCLUSION

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

⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case. *Daniel Deparini*, 44 ECAB 657 (1993).

⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Richard Yadron*, 57 ECAB 207 (2005); *Eugene Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2009
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