United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 08-1967**
	)	**Issued: March 25, 2009**
U.S. POSTAL SERVICE, ROCKY MOUNT CARRIER ANNEX, Rocky Mount, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2008 appellant filed a timely appeal from an October 5, 2007 decision of the Office of Workers' Compensation Programs denying her traumatic injury claim and a January 7, 2008 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim and the nonmerit denial of reconsideration.

ISSUES

The issues are: (1) whether appellant has established that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for a merit review.

FACTUAL HISTORY

On August 15, 2007 appellant, then a 42-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) asserting that being forced to work with her office door shut on May 15, 2007 caused major depressive disorder with consequential migraine headaches.

On May 15, 2007 appellant accepted a light-duty job offer working for eight hours a day in an office with the door kept shut. On May 29 and June 4, 2007 she accepted, under protest, a renewal of the May 15, 2007 job offer. Appellant contended that working with the door shut violated her medical restrictions.

In June 19 and August 7, 2007 letters, Dr. Judith Yongue, an attending psychiatrist, noted work restrictions.[1] Appellant also submitted several letters and duty status reports (Form CA-17) from Carolyn Pugh, a physician's assistant.

In a July 14, 2007 grievance settlement, employing establishment and union officials agreed that appellant would be allowed to keep her workroom door open.

In an August 21, 2007 statement, the employing establishment stated that appellant's workroom door was closed on unspecified dates because of past incidents with a coworker.

Appellant submitted coworker statements asserting that management instructed her to keep her door closed because of an interpersonal conflict with a coworker in September 2006.

In a September 4, 2007 letter, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she explain why she accepted the May 15, 2007 job offer if she was medically unable to work in a closed room.

In a September 17, 2007 letter, James Matthewson, a union steward, stated that he represented appellant on May 15, 2007 when she was given a limited-duty job offer requiring her to work with her office door closed. He protested the offer and instructed appellant to file a grievance.

By decision dated October 5, 2007, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that she failed to substantiate that she worked with her office door shut on May 15, 2007.

In an October 30, 2007 letter, appellant requested reconsideration. She reiterated that working with her door closed on May 15, 2007 caused an emotional condition. Appellant submitted an October 4, 2008 duty status form (CA-17) signed by Ms. Pugh.

By decision dated January 7, 2008, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review. It found that the duty status form was repetitive of evidence previously of record.

[1] The record also contains an unsigned fragment of a July 15, 2007 report typed on Dr. Yongue's letterhead. This report mentions that appellant should be allowed to open or close her workroom door at her discretion.

LEGAL PRECEDENT -- ISSUE 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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

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.[4] 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.[5]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition with migraine headaches as a result of an employment incident the Office found did not occur. Therefore, the Board must review whether appellant submitted sufficient evidence to establish the alleged May 15, 2007 incident as a factual, compensable employment factor under the terms of the Act.

Appellant attributed her emotional condition to being made to work in an office with the door closed on May 15, 2007. In support of her allegations, she submitted a May 15, 2007 job offer noting the requirement of keeping her office door shut. The employing establishment explained that it required appellant to work with the door closed due to past altercations with a coworker. However, there is no evidence of record that she actually worked with the door shut on May 15, 2007. Mr. Matthewson, a union steward, noted assisting appellant in protesting the requirement to keep her office door closed. However, he did not state that she had worked with her door shut on May 15, 2007. Appellant also provided coworker statements asserting that she worked with the door shut on unspecified dates. The Board finds that the coworker and

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *See Norma L. Blank*, 43 ECAB 384 (1992).

[5] *Id.*

employing establishment statements are too vague to establish that appellant worked in a room with the door shut on May 15, 2007. None of the statements specify the dates on which appellant worked in an office with the door closed.

Appellant also submitted a July 14, 2007 settlement agreement stipulating that she would be allowed to work with the door open. The agreement does not establish that she worked on May 15, 2007 with the door closed. Therefore, the agreement is insufficient to establish the identified incident as factual.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as she failed to establish the alleged incident as factual. As she has not established any compensable work factors, the medical record need not be addressed.[6]

LEGAL PRECEDENT -- ISSUE 2

To require the office to reopen a case for merit review under section 8128(a) of the Act,[7] 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.[8] 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.[9]

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[10] The claimant need only submit relevant, pertinent evidence not previously considered by the Office.[11] 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.[12]

[6] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b). *See also T.E.*, 59 ECAB ___ (Docket No. 07-2227, issued March 19, 2008).

[10] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[11] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[12] *Annette Louise*, 54 ECAB 783 (2003).

ANALYSIS -- ISSUE 2

The Office denied appellant's traumatic injury claim by an October 5, 2007 decision. Appellant requested reconsideration by letter dated October 30, 2007. She asserted that she sustained an emotional condition on May 15, 2007 when made to work in an office with the door shut. Appellant also submitted a form report from Ms. Pugh, a physician's assistant.

Appellant's October 30, 2007 letter is repetitive of her prior arguments which were previously rejected. Evidence or argument which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.[13] The duplicative nature of this evidence does not require reopening the record for further merit review. Ms. Pugh's form report does not address fact of injury. 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.[14]

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 appellant has not established that she sustained an emotional condition in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration.

[13] *Denis M. Dupor*, 51 ECAB 482 (2000). *See also David Champion*, Docket No. 05-1373 (issued December 15, 2005) (where the Board held that the claimant's arguments on reconsideration regarding a recurrent pay rate were repetitive of his prior arguments and were therefore insufficient to reopen the case for a merit review).

[14] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 7, 2008 and October 5, 2007 are affirmed.

Issued: March 25, 2009
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