

**United States Department of Labor
Employees' Compensation Appeals Board**

C.F., Appellant)

and)

U.S. POSTAL SERVICE, ALABAMA)
PERFORMANCE CLUSTER, Birmingham, AL,)
Employer)

**Docket No. 08-2215
Issued: May 21, 2009**

Appearances:
C.B. Weiser, Esq., for the appellant
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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 11, 2008 appellant filed a timely appeal from a May 19, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying her reconsideration request. Because more than one year has elapsed between the last merit decision dated September 28, 2004 and the filing of this appeal on August 11, 2008, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for a merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 6, 2003 appellant, then a 44-year-old operations support specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2003 she received electronic mail from her supervisor stating that her work hours would be changed from 7:00 a.m. to 4:00

p.m. to 5:00 p.m. to 1:30 a.m., and her off days of Saturday and Sunday would be changed to Sunday and Monday, effective November 8, 2003. She alleged that these changes in her employment caused her major depression. Appellant stopped work on November 5, 2003.

By decision dated November 18, 2003, the Office denied appellant's claim on the grounds she did not establish an emotional condition in the performance of duty. It found there was no evidence of error or abuse in the administrative actions concerning change in reporting times and rescheduling of days off.

On December 2, 2003 appellant disagreed with the Office's November 18, 2003 decision and requested an oral hearing, which was held on July 26, 2004. She testified regarding the tour change, the change in work environment, the use of leave, and an allegation that Dawiyd R. Barrow-El, an acting manager, had left her claim in the men's bathroom.

The record also includes another claim for an emotional condition. On March 1, 2004 appellant filed another occupational disease claim (Form CA-2) alleging that she sustained an aggravation of her emotional condition due to the employing establishment putting her in a leave without pay status instead of allowing her to use sick leave. She further claimed that Mr. Barrow-El left her claim in the men's bathroom. Appellant stated that she first realized her condition was aggravated by her employment on February 11, 2004. She stopped work November 6, 2004. The Office assigned the claim file number xxxxxx854. By decision dated May 24, 2004, it denied appellant's claim on the grounds she did not establish an emotional condition in the performance of duty.

By decision dated September 28, 2004, the Office hearing representative affirmed the Office's November 18, 2003 decision. The hearing representative stated that the Office properly denied appellant's claim with respect to the issues concerning use of leave and her allegation that Mr. Barrow-El left her CA-1 form in a public restroom.

By letter dated September 23, 2005, appellant, through her attorney, requested reconsideration. Counsel argued that the employing establishment's changes in appellant's work shift and work duties were compensable employment factors. He additionally alleged that appellant's allegation regarding the supervisor's leaving her claim form in the men's restroom should be considered factual and compensable as there is no rebuttal of appellant's testimony that such event occurred.

In support of the reconsideration request, copies of material previously of record in the current claim and file number xxxxxx854 were submitted. Material previously of record in the current claim included: an October 31, 2003 letter from Mr. Barrow-El originally received November 12, 2003 and a September 2, 2004 letter by Anna Oxendine Connor, Lead Plant Manager, addressed to the Office and originally received September 7, 2004. Material previously of record under file number xxxxxx854 included: an April 1, 2004 letter by Injury Compensation Manager Linda L. Smith received April 5, 2004; a March 5, 2004 memorandum by Mr. Barrow-El in response to appellant's allegations in her second claim for emotional stress received April 5, 2004; and a copy of appellant's statement in support of her second claim for emotional stress received March 12, 2004.

In a follow-up letter of May 7, 2008, appellant's attorney requested the status of his September 23, 2005 reconsideration request.

By decision dated May 19, 2008, the Office denied appellant's application for review on the grounds that it did not raise substantive legal questions or include new and relevant evidence sufficient to require further merit review.

LEGAL PRECEDENT -- ISSUE 1

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹ the Office 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.² 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.³ 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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

By decision dated November 18, 2003, the Office denied appellant's claim for an emotional condition arising on November 3, 2003 on the grounds that no compensable employment factors were established. By decision dated September 28, 2004, an Office hearing representative affirmed the November 18, 2003 decision. The record additionally reflects that the Office denied appellant's second claim for emotional stress arising on February 11, 2004 in case file number xxxxxx854.

Appellant's September 24, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. While appellant's attorney contended in his September 23, 2005 letter that appellant's change in her work shift and work duties were compensable employment factors, the Office hearing representative previously considered and addressed this argument in the September 28, 2004 decision. The Office hearing representative also addressed appellant's allegation regarding

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

² 20 C.F.R § 10.606(b)(2).

³ *Id.* at § 10.607(a).

⁴ *Id.* at § 10.608(b).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

a copy of appellant's claim allegedly being left in a public restroom. The Board notes this allegation was also part of file number xxxxxx854 and was addressed in the Office's May 24, 2004 decision. As these contentions were previously considered and rejected by the Office, they are cumulative and repetitive and do not constitute a basis for reopening appellant's claim. Consequently, 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).

In support of her request for reconsideration, appellant submitted material which was duplicative of record and previously considered by the Office in both the current claim and in file number xxxxxx854. As these documents were previously received and reviewed by the Office, it is therefore, cumulative and duplicative in nature.⁶ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board 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 September 24, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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

⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).