

Appellant, through his representative, requested reconsideration of his claim on September 26, 2008. Counsel argued that the alleged incidents occurred and that appellant experienced excessive harassment from his supervisors. By decision dated December 18, 2008, the Office denied modification of the December 20, 2007 decision. The Office again found no compensable work factors had been established.

In a letter dated April 3, 2009, appellant requested reconsideration of the claim. He argued that the statements from Maxine German-Hawkins, Carroll Hendrid and Dean Lamberti were sufficient to establish a compensable work factor. According to appellant, the Office improperly gave weight to statements by Delbert Tullius and Curtis Warner. Appellant resubmitted the statements from Ms. German-Hawkins, Ms. Hendrid and Mr. Lamberti. In addition, he resubmitted a May 18, 2007 report from a psychiatrist, Dr. Kevin Harrison; a June 11, 2007 report from a psychiatrist, Dr. Richard Bacharach; and a March 24, 2008 report from Dr. Margit Bleecker, a neurologist.

By decision dated April 16, 2009, the Office denied the request for reconsideration without merit review of the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.¹ The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."²

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.³

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.605 (1999).

³ *Id.* at § 10.606(b)(2).

⁴ *Id.* at § 10.608.

ANALYSIS

In the April 3, 2009 application for reconsideration, appellant again expressed his disagreement with the Office's finding that no compensable work factors were established. He argued that the coworker statements were sufficient to establish a compensable work factor based on harassment or verbal abuse. The standard, however, for requiring a merit review is that the application shows that the Office erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously considered by the Office. Appellant did not show that the Office erroneously applied a specific point of law. He indicated that he disagreed with the Office's assessment of the factual evidence, without showing an erroneous application of a specific point of law. Moreover, appellant did not advance a new and relevant legal argument. He cited a case involving an allegation of harassment,⁵ but this case only reiterated the well-established principle that harassment may be a compensable work factor if there is sufficient factual evidence. The reopening of a case is not required where the legal contention has no reasonable color of validity.⁶ The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument.

With respect to accompanying evidence, appellant did not submit any new evidence. The coworker statements were all previously submitted to the record prior to the last merit decision on December 18, 2008. The medical evidence would not be relevant until a compensable work factor was established, and in any case the medical evidence was duplicative.⁷

On appeal, appellant asserts that he did present a legal contention not previously considered, namely that the Office "misapplied facts to the law given overwhelming evidence from unbiased witnesses that support [appellant's] claim." He cited the case of *Charles E. Munson*⁸ for the proposition that the Office should have weighed the unbiased testimony of witnesses against the biased testimony from the employing establishment. In *Munson*, the Board found the claimant had not substantiated a claim for harassment, discrimination or other compensable work factor and, in addition, the Office had properly denied merit review.⁹ It does not support appellant's argument that he had met the requirements of 20 C.F.R. § 10.606(b)(2) in this case. In his April 3, 2009 application for reconsideration, appellant stated his disagreement

⁵ *Paul H. Comer*, Docket No. 01-730 (issued December 20, 2001). Appellant also cited *Beverly Dark*, Docket No. 01-2178 (issued February 3, 2003), for the proposition that the statements show the alleged harassment was not based solely on appellant's perception. This case noted only that mere perceptions of harassment are not compensable; the Board found a compensable work factor based on chronic pain from an accepted employment injury.

⁶ *Elaine M. Borghini*, 57 ECAB 549 (2006); *Annette Louis*, 54 ECAB 783 (2003).

⁷ Although the Office considered the March 24, 2008 report from Dr. Bleecker as new evidence, it had been submitted to the record on September 26, 2008.

⁸ Docket No. 02-1796 (issued February 13, 2003).

⁹ In *Munson*, the claimant made allegations of harassment and discrimination, but provided no probative supporting evidence.

with the Office's findings, without meeting any of the requirements for reopening the case for merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2009 is affirmed.

Issued: February 23, 2010
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