

FACTUAL HISTORY

On February 25, 2008 appellant, then a 52-year-old nursing assistant, filed a traumatic injury claim alleging that she experienced emotional stress and an elevated blood pressure as a result of mental abuse by a coworker on April 25, 2007. On April 25, 2008 the Office requested additional information and evidence supporting her claim. Having received no additional evidence, it denied appellant's claim in a May 30, 2008 decision.

On May 30, 2008 appellant requested reconsideration. She submitted hospital records dated April 25 through 28, 2007 reflecting that she was admitted for a presyncopal episode associated with hypertension. On April 27, 2007 Dr. Miriam P. Garcia, a Board-certified family practitioner, noted that appellant had a sudden onset of headaches with dizziness, as well as some element of anxiety. She diagnosed cerebrovascular insufficiency/ischemic event.

Appellant also submitted reports from Dr. Richard Curtis, a Board-certified psychiatrist. In a March 20, 2008 attending physician's report, Dr. Curtis diagnosed post-traumatic stress disorder (PTSD) and placed a checkmark in the "yes" box that her condition was caused or aggravated by employment activities. He stated that appellant "was treated inappropriately at work in a sexual way and symptoms have worsened." On June 17, 2008 Dr. Curtis advised that she had a prior history of PTSD following a brutal rape. He reiterated that appellant's condition was related to her employment, stating that she had recently seen "inappropriate behavior from another employee while at work."

On August 7, 2008 the Office asked appellant to provide further details regarding the alleged April 25, 2007 incident, as well as evidence to support her claim.

In an April 27, 2007 "Report of Contact" Denise A. Coleman, a registered nurse, stated that appellant had been hospitalized due to "some sort of seizure disorder that was brought on by stress." Describing the alleged events of April 25, 2007, appellant stated that she had observed her boyfriend, a coworker, kissing a patient in her room. Upon deciding to report him to the police, appellant felt dizzy. She admitted yelling at the patient and slapping her boyfriend.

An April 26, 2007 investigative report reflected that appellant, her boyfriend and the patient were involved in an altercation on April 25, 2007. Her boyfriend stated that appellant yelled at the patient and approached her like a mad woman when she saw him putting food on the patient's table. When he tried to calm her down, appellant struck him on the side of his face with her open hand.

In an August 18, 2008 report, Tom Mullens, a licensed clinical social worker, stated that appellant was receiving counseling for PTSD, which resulted from a brutal rape. He indicated that she was traumatized in April 2007 while at work, when she witnessed her boyfriend kissing a female patient. Mr. Mullens stated that the incident exacerbated her symptoms of pervasive anxiety.

In a September 4, 2005 statement, appellant contended that she was mistreated on April 25, 2007. The shock of seeing her boyfriend kissing a patient in a sexual way caused her blood pressure to rise.

In a September 10, 2008 decision, the Office denied modification of its prior decision on the grounds that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty. It accepted that on April 25, 2007 appellant saw her boyfriend kissing a patient; became upset and yelled at the patient; and slapped her boyfriend. The Office found, however, that she failed to establish a compensable factor of employment. It determined that she had not been mistreated at the employing establishment. The Office found that the accepted incident did not relate to her assigned duties, but rather was a personal matter that had been imported to the workplace. Noting that an investigation was an administrative matter, it found the evidence insufficient to establish that the employing establishment erred in any way.

On April 7, 2009 appellant requested reconsideration. In support of her request, she submitted medical notes and reports, including those from Tucker Psychiatric from October 31, 2005 through January 19, 2009 and from the Richmond Veterans Administration Medical Center dated April 25, 2007.

By decision dated April 27, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further review of the case on the merits. It found that she failed to provide any factual evidence to support a compensable work factor.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² 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.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 on the merits.⁵ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

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

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ANALYSIS

Appellant's April 7, 2009 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, she 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).

The Board finds that appellant failed to submit relevant and pertinent new evidence not previously considered by the Office. The Office's denial of appellant's claim was based on its determination that she did not establish a compensable factor of employment. Therefore, the underlying issue in the case was factual in nature. In support of her request for reconsideration, appellant submitted medical notes and reports, including those from Tucker Psychiatric and the Richmond Veterans Administration Medical Center. The Office is not required to consider medical evidence in an emotional condition case where no work factors have been established.⁷ The medical evidence submitted by appellant is not relevant to the underlying issue in this case. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.⁹

On appeal, appellant contends that her stress-related injury occurred at work while in the performance of duty. The issue for determination is whether the Office properly refused to reopen appellant's case for further review of the merits. As noted, the Board finds that the Office properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's request for further merit review.

⁷ See *Richard Yadron*, 57 ECAB 207 (2005).

⁸ *Patricia G. Aiken*, 57 ECAB 441 (2006).

⁹ See *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 27, 2009 is affirmed.

Issued: July 7, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board