

FACTUAL HISTORY

On October 18, 2008 appellant, then a 42-year-old registered nurse, filed a traumatic injury claim alleging that on July 30, 1993 she developed major depression and bipolar disorder as a result of the employing establishment's denial of her request for leave without pay and light-duty work due to her early labor symptoms. She stated that she was forced to resign on the date of injury due to the denial of her request.

In a decision dated December 11, 2008, the Office denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. It found that she first became aware of her emotional condition and the relationship to her employment on July 30, 1993 when she resigned from the employing establishment but appellant did not file her claim within three years of that date. The Office found that her immediate supervisor did not have actual knowledge of the alleged employment-related injury within 30 days. It found that, even if appellant's claim was timely filed, the evidence of record failed to establish that she sustained an emotional condition while in the performance of duty.

On December 29, 2008 appellant requested a review of the written record by an Office hearing representative.

By decision dated April 1, 2009, an Office hearing representative found that appellant's claim was not timely filed in accordance with section 8122 of the Federal Employees' Compensation Act and affirmed the December 11, 2008 decision.

On May 19, 2009 appellant requested reconsideration.

In a May 26, 2009 decision, the Office denied appellant's request for reconsideration. It found that she did not raise a substantive legal question or submit any new and relevant evidence.

On August 10, 2009 appellant appealed the Office's April 1, 2009 decision to the Board.

In an order dated September 17, 2009, the Board granted appellant's September 3, 2009 request to dismiss her appeal.²

By letter dated September 29, 2009, appellant requested that the Office reconsider its April 1, 2009 decision. She submitted medical evidence dated May 15, 1993 to October 5, 1998 that addressed, among other things, her emotional condition, disability and treatment. In a May 30, 1995 medical report, Dr. Oscar A. Ruiz Lacomba, an attending Board-certified psychiatrist, stated that extensive correspondence suggested a strong history of discrimination and unfair labor practices directed towards appellant while working at the employing establishment from December 1992 to July 1993. Dr. Ruiz Lacomba related that since the employing establishment's denial of appellant's July 1993 request for leave without pay due to her deteriorating health mental health and complications from her pregnancy, she remained unemployed. He opined that, despite a history of an emotional condition dating back to

² Docket No. 09-2086 (issued September 17, 2009).

adolescence, her ongoing depressive syndrome was caused by her employment. Dr. Ruiz Lacomba concluded that appellant remained totally disabled. Appellant submitted a description of her registered nurse position.

In a January 21, 2010 decision, the Office denied appellant's request for reconsideration. It found that she failed to raise a substantive legal question or submit new and relevant evidence.³

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Act,⁴ the Office's regulations provide 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.⁵ 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.⁶ 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 of the merits.

ANALYSIS

Appellant's September 29, 2009 request for reconsideration did not allege or 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. The Board finds that she is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. Dr. Ruiz Lacomba opined in a May 30, 1995 report that appellant's ongoing depressive syndrome was caused by her employment and that she was totally disabled. This report does not pertain to the issue of whether she timely filed a claim for an emotional condition under section 8112 of the Act. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁷

³ Following the issuance of the Office's January 21, 2010 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1). Appellant may submit this evidence and legal contentions with a formal, written request for reconsideration to the Office. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

⁴ 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. 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(1)-(2).

⁶ *Id.* at § 10.607(a).

⁷ *D. Wayne Avila*, 57 ECAB 642 (2006).

Similarly, the remaining medical evidence submitted is not relevant to the underlying issue of whether appellant timely filed a claim for an emotional condition. The Board finds that this evidence is insufficient to reopen her claim for further merit review.⁸

In this regard, a copy of appellant's registered nurse position set forth its requirements. As the position description does not address the issue of whether her emotional condition claim was timely filed, this evidence is not relevant to the particular issue involved and, thus, does not warrant reopening her claim for further merit review.⁹

The Board finds that the Office properly determined that appellant was not entitled to further 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 29, 2009 request for reconsideration.¹⁰

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

⁸ *Id.*

⁹ *Id.*

¹⁰ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration 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).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2011
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