United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 10-1826**
	)	**Issued: March 15, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Gaithersburg, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal of a December 31, 2009 decision of the Office of Workers' Compensation Programs, denying her request for reconsideration without merit review of the claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the December 31, 2009 nonmerit decision. Since more than 180 days elapsed from the last merit decision of October 5, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. § 501.3(e).

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 24, 2006 appellant, then a 55-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2006 she sustained an injury in the performance of duty. She described the incident as verbal abuse by a supervisor, resulting in stress and accompanying physical symptoms.[2]

By decision dated November 30, 2006, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish the claim. In a decision dated July 19, 2007, the Office modified the November 30, 2006 Office decision to reflect a "fact of injury" denial.[3]

In a decision dated November 19, 2008, the Office reviewed the case on its merits and denied modification. By decision dated June 24, 2009, it accepted a compensable work factor on June 20, 2006, when a supervisor was verbally abusive to appellant. The Office found that the medical evidence did not establish an injury causally related to the June 20, 2006 incident. It noted that appellant's statements also referred to additional incidents occurring on more than one workday or shift, which would be the basis for an occupational disease claim; not of traumatic injury on June 20, 2006.

By decision dated October 5, 2009, the Office reviewed the case on its merits and denied modification.

On November 16, 2009 appellant requested reconsideration of her claim. She submitted an occupational disease claim (Form CA-2) dated November 12, 2009, describing the nature of the injury as generalized anxiety disorder and dysthemia. On the claim form appellant described a June 20, 2006 incident with her supervisor. In addition, she submitted a July 23, 2009 report from a social worker.

By decision dated December 31, 2009, the Office found that appellant's reconsideration request did not warrant further merit review of the claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[4] the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office];

[2] Appellant noted rapid heart rate and sweating.

[3] The November 30, 2006 decision did not find that fact of injury had been established. It did accept that an employment incident occurred.

[4] 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.)"

or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."[5] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[6]

ANALYSIS

The Office accepted that a compensable work factor occurred on June 20, 2006 when appellant was subject to verbal abuse by a supervisor. The claim was denied by the Office on the grounds that the medical evidence did not establish causal relationship between a diagnosed stress condition and the employment incident. As noted, the Board does not have jurisdiction in this appeal over the merits of the compensation claim. The issue is whether the Office properly determined that appellant's November 16, 2009 application for reconsideration was insufficient to warrant further merit review.

The application for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered. With her application for reconsideration appellant submitted a November 12, 2009 Form CA-2, which described the June 20, 2006 employment incident. This does not constitute relevant and pertinent evidence. The Office has accepted a compensable work factor with respect to the June 20, 2006 verbal abuse incident.[7] The claim form is not relevant to the underlying medical issue in this traumatic injury claim.

Appellant also submitted a report from a social worker. A social worker is not a physician as defined under the Act. The report has no probative value on the medical issue presented.[8] It is well established that evidence which does not address the relevant issue is not sufficient to warrant reopening the case for merit review.[9] The Board finds that appellant did not submit new and relevant evidence to the issue presented. Appellant 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 submit relevant and pertinent evidence not previously considered by the Office. Accordingly, she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly declined to reopen the case for merit review.

CONCLUSION

The Board finds the Office properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

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[5] 20 C.F.R. § 10.606(b)(2).

[6] *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

[7] A Form CA-2 is a claim for injury based on incidents occurring over more than one workday.[7] *See* 20 C.F.R. § 10.5(q). If appellant is claiming an injury based on incidents other than the June 20, 2006 incident, she may pursue such a claim with the Office.

[8] 5 U.S.C. § 8101(2); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[9] *Patricia Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 31, 2009 is affirmed.

Issued: March 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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