



that she developed her emotional condition due, in part, to a heavy work load.<sup>1</sup> She repeated her allegation that she was subjected to a hostile work environment. Appellant submitted a copy of a March 10, 2000 memorandum and a January 4, 2001 e-mail from Annamarie DeBella in which she described her problems with supervisors. She also submitted evidence previously considered by the Office.

By decision dated January 11, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review of her claim. It also noted that she now claimed a new employment factor, a heavy work load. Previously appellant had alleged a hostile work environment, an allegation which the Office found to be unsupported by the evidence. She was advised to file a new claim if she wished the Office to consider a new employment factor.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act<sup>2</sup> does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>5</sup> the Office's 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> The employing establishment provided a December 24, 2007 response to appellant's new allegation of a heavy work load and also denied her previous allegations of a hostile work environment.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>5</sup> Under section 8128(a) of the Act, "[t]he 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).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> 20 C.F.R. § 10.608(b).

### ANALYSIS

Appellant requested reconsideration of the November 17, 2006 merit decision. She repeated her allegation that she was subjected to a hostile work environment and submitted evidence previously of record. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case. Therefore, the repetition of appellant's allegation of a hostile work environment, the submission of evidence previously of record does not constitute relevant and pertinent new evidence not previously considered by the Office.

In her reconsideration request, appellant also claimed a new employment factor, a heavy work load. She submitted statements from a Ms. DeBella who described her personal problems with supervisors. Ms. DeBella's statements do not pertain to the issue of her allegations of a hostile work environment. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> The issue in the November 17, 2006 merit decision was whether appellant sustained an injury due to a hostile work environment. Therefore, the new allegation of a heavy work load and the statements from Ms. DeBella do not constitute relevant and pertinent new evidence not previously considered by the Office.

Appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office properly denied her request for reconsideration.

### CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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<sup>9</sup> *D.K.*, 59 ECAB \_\_ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 11, 2008 is affirmed.

Issued: October 17, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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