

FACTUAL HISTORY

On September 25, 2007 appellant, then a 53-year-old letter carrier, filed an occupational disease claim alleging that she had a mental breakdown while in the performance of duty. She stopped work on June 12, 2007 and did not return.

In June 12 and October 31, 2007 statements, appellant alleged that she was subjected to workplace violence on June 12, 2007 and was not given management assistance. She requested that her supervisor move a vehicle that was parked at the loading dock. Appellant was approached by the owner of the vehicle who became confrontational and used profanity. She further alleged that on June 13, 2007 she requested absence under the Family Medical Leave Act but was told by her supervisor that she would be considered absent without leave if she did not report to work by 7:30 a.m. Appellant alleged that she was harassed and noted disparity in treatment she received and that of her coworkers. She indicated that the employer improperly challenged her claim asserting that it was self-generated. In an October 4, 2007 statement, the employing establishment challenged appellant's claim.

After an Office request for additional evidence, the employing establishment submitted a statement from Linda Williams, an employee. On June 12, 2007 Ms. Williams parked her car at the loading dock and was removing equipment from the vehicle when appellant confronted her and told her that she was breaking the rules and spoke to her in an offensive manner.

Appellant submitted several documents including a March 20, 1998 occupational disease claim form alleging an emotional condition in a separate claim, file number xxxxxx308, copies of grievances and grievance decisions dated February 28, 1996 to May 13, 2000, investigative interviews, leave requests and witness statements for incidents occurring from 1996 to 2000 and a notice of suspension dated April 6, 2000. She also submitted treatment notes dated August 23, 2002 to December 5, 2007 from Dr. Allen C. Alleman, a Board-certified family practitioner, who treated her for stress.

In a February 5, 2008 decision, the Office denied appellant's claim finding that the claimed emotional condition did not occur in the performance of duty.

Appellant requested an oral hearing that was held on August 7, 2008. She submitted an undated statement listing incidents that occurred before June 12, 2007 which aggravated her emotional condition. Appellant provided a November 4, 2006 workplace incident report alleging that she was struck by Anthony Lamberti, a city carrier, on November 4, 2006, after a dispute over annual leave selection. She submitted a December 15, 2006 notice of removal of Mr. Lamberti, for unacceptable conduct surrounding a physical confrontation with appellant on November 4, 2006 in which she sustained a contusion of the left middle finger. Also submitted was a December 15, 2006 grievance resolution in which Mr. Lamberti's removal was reduced to a seven-day suspension that would be removed after a year if there were no similar incidents. In a June 12, 2007 statement, Andrew Reetz, a coworker, noted witnessing the June 12, 2007 incident between appellant and Ms. Williams. He stated that it escalated into verbal profanity and he believed that appellant was defending herself. Appellant submitted February 15 to August 25, 2008 reports from Dr. Alleman who continued treating her. Also submitted was a report from a therapist, dated August 29, 2008, who treated her for depression and anxiety.

The employing establishment submitted an August 28, 2008 e-mail from Zachary Carter, manager of operations, who disputed appellant's allegations, noting that she had a history of confrontations with employees over the years and created a hostile environment. He asserted that she was the cause of conflict with other employees.

In a decision dated September 29, 2008, the hearing representative affirmed the February 5, 2008 decision. She noted that the work incidents for the period February 1996 to April 1998 were developed in a separate claim and that appellant provided insufficient corroborative evidence to substantiate her other allegations.

In a September 22, 2008 statement, appellant disputed the correspondence from Mr. Carter and noted it was fabricated. She indicated that she had no funds and was unable to pay for medication and sought reimbursement for her expenses. Appellant submitted a September 10, 2008 report from Dr. Nancy Block-Olexick, a clinical psychologist, who diagnosed anxiety and depressive disorder which was precipitated by an accumulation of work-related exposures to hostility in the workplace.

On September 25, 2009 appellant's attorney requested reconsideration.³ Counsel asserted the Office's decisions did not provide sufficient findings of fact and statement of reasons in denying the claim. Appellant indicated that she provided corroborative evidence of her allegations and referenced a November 4, 2006 workplace incident report and a December 15, 2006 notice of removal for Mr. Lamberti. She asserted that the Office focused exclusively on the June 12, 2007 work incident and contended that she established a compensable work factor. Appellant asserted that she provided a witness statement from Mr. Reetz who described a heated and emotional exchange between her and Ms. Williams. She submitted a November 4, 2006 workplace incident report, a December 15, 2006 notice of removal for Mr. Lamberti and a June 12, 2007 witness statement from Mr. Reetz, all previously of record. Also submitted was a March 10, 2009 Social Security Administration decision that granted appellant disability benefits commencing December 2007 and noted that she was disabled starting June 12, 2007.

In an October 28, 2009 decision, the Office denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act,⁴ the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant

³ The Board notes that appellant's attorney originally submitted a document dated November 19, 2008. In memorandum dated September 29, 2009, the attorney stated that the reconsideration request was submitted on September 25, 2009 and the November 19, 2008 date was a typographical error.

⁴ 5 U.S.C. § 8128(a).

may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(2) Advances a relevant legal argument not previously considered by the [Office]; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁶

ANALYSIS

The Office’s October 28, 2009 decision, denied appellant’s reconsideration request finding that it was insufficient to warrant a merit review. Appellant submitted a September 22, 2008 statement and indicated that Mr. Carter’s statement was fabricated. She indicated that she had financial difficulty with regard to payment for medication. On September 25, 2009 appellant’s attorney asserted that the Office erred by providing insufficient fact-findings and reasons for denying her claim. Appellant contended that her allegations were supported by evidence and referenced a November 4, 2006 workplace incident report and a December 15, 2006 notice of removal for Mr. Lamberti. With regard to the work incident of June 12, 2007 she established a compensable work factor and provided a witness statement from Mr. Reetz who described a heated and emotional exchange between appellant and Ms. Williams. Appellant’s contentions and evidence do not show how the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office. She did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law. Appellant’s contention that the Office did not make findings of fact or reasons for their denial is without merit as the Office evaluated the evidence and set forth the incidents that occurred which were not factors of employment and incidents that were not verified and determined that appellant did not establish a compensable factor of employment. Consequently, appellant 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).

Appellant submitted a November 4, 2006 workplace incident report, a December 15, 2006 notice of removal for Mr. Lamberti and a June 12, 2007 witness statement from Mr. Reetz, all previously of record. The Board notes that this evidence is duplicative of that already of

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b).

record and was previously considered by the Office in its September 29, 2008 decision.⁷ The Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant submitted a new September 10, 2008 report from Dr. Block-Olexick, a clinical psychologist, who diagnosed anxiety and depressive disorder which was precipitated by an accumulation of work-related exposures to hostility in the workplace. However, the underlying issue in the case is not medical in nature. Instead, it involves appellant's failure to establish as factual a compensable employment factor. This medical report is not relevant as no compensable employment factors have been established.⁸ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant submitted a March 10, 2009 Social Security Administration decision, which granted her disability benefits beginning December 2007 and finding that she was disabled starting June 12, 2007. However, this evidence is not relevant as the Board has held that entitlement to benefits under another act does not establish entitlement to benefits under the Act.⁹ The Board has noted that there are different standards for medical proof on the question of disability under the Act and under the Social Security Act.¹⁰

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim as she did not present evidence or argument satisfying any of the three regulatory criteria, under section 10.606(b)(2), for obtaining a merit review.

On appeal, appellant asserts that the Social Security Administration determined that she was disabled as of the date of the incident which supported her claim for benefits under the Act. She asserted that she submitted sufficient evidence to establish her claim for an emotional condition. The Board notes, however, that it only has jurisdiction over whether the Office properly denied a merit review of the claim. As explained, appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration.

⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁸ *See C.T.*, Docket No. 08-2160 (issued May 7, 2009) (if a claimant has not established any compensable employment factors, the Office need not consider the medical evidence).

⁹ *Freddie Mosley*, 54 ECAB 255 (2002). *See Deparini*, *supra* note 7.

¹⁰ *Deparini*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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