

In a March 18, 2004 statement, appellant contended that a coworker, Dwayne Hart, pushed an all-purpose carrier into her hitting her head and face. She noted that another coworker, T.E. Adams, informed her that Mr. Hart had called her a "fat cow." Mr. Hart came by a few minutes later and told appellant her mother was a "fat cow." She called his mother a "fat cow." Appellant stated that Mr. Hart followed the coworker but as he did so, he pushed the all-purpose carrier at her.

In a March 19, 2004 statement, Mr. Adams indicated that appellant was scanning mail with an all-purpose carrier approximately three feet behind her. He commented that Mr. Hart dumped a bag of mail into the metro hamper. Appellant called over a supervisor and claimed that Mr. Hart had dumped wet mail and she would not touch it. She then stated that the supervisor should put a leash on Mr. Hart. Mr. Hart responded by telling appellant to put "a leash on yourself, you fat cow." The supervisor ordered Mr. Hart to come with him. Mr. Adams indicated that the argument started again and the supervisor intervened again. Mr. Adams stated that after Mr. Hart left, appellant claimed that he had pushed an all-purpose carrier into her face and the left side of her head. Mr. Adams commented he could not see how appellant could have been struck there as she was facing away from the carrier and it was behind her.

In an investigative memorandum, a supervisor stated that appellant and Mr. Hart had become involved in a verbal altercation. The supervisor asked Mr. Hart to leave the area at that time to defuse the situation. He then returned to the area and the altercation began again. The supervisor escorted Mr. Hart out of the area, with Mr. Hart walking behind him. He then heard appellant yell that Mr. Hart had hit her with the carrier. The supervisor examined appellant and saw no signs of blood, cuts or other signs of injury. He examined the carrier for defects and blood but found neither. Appellant was taken to the hospital.

In a March 29, 2004 letter, the Office informed appellant that the evidence she had submitted was insufficient to support her claim that she actually experienced the incident or employment factor alleged to have caused her injury. The Office also noted that appellant had not submitted any medical report that gave a diagnosis or any condition resulting from the March 18, 2004 incident. The Office requested that appellant submit a statement describing the incident in detail and asked that appellant submit medical evidence giving a diagnosis of any injuries from the incident, findings that supported the diagnosis and the period and extent of disability. Appellant was given 30 days to submit such evidence.

In a May 6, 2004 decision, the Office denied appellant's claim on the grounds that she had not established that she sustained an injury in the performance of duty.

In a June 1, 2004 letter, appellant stated that she had unknowingly filed a claim for compensation. She stated that she had become involved in a verbal altercation on March 18, 2004 which led to a coworker pushing an all-purpose carrier into her head. She indicated that at some point she became incoherent, going in and out of consciousness and feeling pain on the head and side of her face. She was taken to the hospital due to extremely high blood pressure and pulse. Appellant noted that she received a suspension for the incident. She stated that she wanted to be assured that the expenses incurred on March 18, 2004 would be absorbed by the employing establishment.

In an April 18, 2005 letter, appellant noted that she had filed a reconsideration request with the Office on June 1, 2004. Appellant commented that she was instructed to have all groups who treated her to file a form for payment. She stated that she received a letter from a hospital stating that the claim was denied by the Office. Appellant related that the hospital stated that it needed a principal diagnosis code. Appellant called the Office for the code and was informed that the claim had been denied. She stated that she had been under the impression that, when she was instructed to have all concerned parties to file a request for payment, the claims would be paid and the matter would be resolved. Appellant indicated that the hospital was going to turn the matter over to a collection agency.

In a May 4, 2005 decision, the Office denied appellant's request for reconsideration as her request had not raised substantive legal questions and had not included new and relevant evidence, it was insufficient to warrant a review of her claim.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹ 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.² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.³

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.⁴

ANALYSIS

In appellant's request for reconsideration, she only indicated that the medical bills from a hospital had not been paid and the hospital was seeking payment from her. She indicated that she was under the impression that the Office would pay the medical expenses once the proper forms were submitted. However, if the Office finds that appellant has not established that she did not sustain an injury in the performance of duty, the Office is under no obligation to pay

¹ 20 C.F.R. § 10.608(b).

² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁴ *Cleo R. Hatch*, 49 ECAB 636 (1998).

medical benefits to appellant.⁵ Appellant did not submit any new factual or medical evidence to establish that she sustained an injury in the performance of duty. She also did not present any new legal arguments that would require the Office to review her case on the merits. The Office did not abuse its discretion in denying appellant's request for reconsideration.⁶

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a). The Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated May 4, 2005, be affirmed.

Issued: September 30, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁵ 5 U.S.C. § 8103(a).

⁶ The Board notes that, subsequent to the May 4, 2005 decision, appellant submitted medical records and a statement to the Office. However, as the Office has not yet made a final decision regarding appellant's newly submitted evidence, the Board does not have any jurisdiction to review this evidence. 20 C.F.R. § 501.2(c).