

FACTUAL HISTORY

On February 15, 2008 appellant, then a 49-year-old budget technician, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty. She indicated that she sustained intense headaches, depression and other emotional symptoms related to concerns for her physical safety at work and her interactions with her supervisors.

In support of her claim, appellant provided a statement in which she described those conditions which she believed contributed to her condition. They included: that she was verbally disciplined and threatened by a supervisor; that she disagreed with the manner her appraisal was handled and that a supervisor made inappropriate comments towards her. Appellant also alleged that on February 13, 2008 she was issued a formal letter of counseling. She also submitted medical evidence noting her treatment for an adjustment reaction that appeared to be work related. The employing establishment controverted the claim and submitted statements explaining the reasons for its actions.

By decision dated June 4, 2008, OWCP denied appellant's claim. It found that there were no compensable factors of employment and that appellant did not establish that her claimed condition arose in the performance of duty.

On June 8, 2008 appellant requested a hearing, which was held on October 27, 2008. At the hearing, appellant's representative noted that he only wished to focus on three of appellant's allegations as the other allegations could not be proven. They included that in February 2008 appellant was encouraged to attend the health clinic, and was subsequently tested in relation to her mental capacity. Appellant's representative alleged that appellant believed the results of the testing affected her employability. Additionally, he alleged that this supported a work-related psychiatric condition because of the referral to the clinic. Appellant's representative also argued that Raul Campos, the chief of the logistics branch and appellant's supervisor, required medical documentation to support her wish to work hours other than those that she had been assigned. Additionally, on October 9, 2008 the employing establishment required that appellant attend a meeting to review the results of the investigation of her complaints. Appellant's representative indicated that appellant was on sick leave when she asked to come in to review the results. He also generally alleged that appellant was not provided with appropriate documentation.

On December 5, 2008 OWCP received a letter dated November 25, 2008 from Mr. Campos who responded to the allegations presented and noted that, during a counseling session on February 13, 2008, appellant became very upset, including crying and wailing. Mr. Campos stated that he was concerned for her health and safety and suggested that she attend the employing establishment clinic for a one-time visit to stabilize her emotional state before she went home. He denied that it was related to her employment and advised that her visit was confidential and that the results from the visit would not be used against her. Mr. Campos noted that he received no information about the clinic visit other than limited information provided to him by appellant. He noted that the visit was not a fitness-for-duty evaluation and confirmed that civilians were given care at the clinic in sensitive situations. Mr. Campos stated that he was unaware of any particular testing conducted at the clinic. With regard to scheduling, he advised that the issue was that appellant wanted to start work at 9:00 a.m. as opposed to 8:00 a.m.

Mr. Campos explained that he had some latitude as long as it meshed with the mission of the employing establishment. He explained that, without further documentation from her physician, it was unclear why appellant needed a later start time. Mr. Campos denied that she was threatened with discipline.

In a letter dated December 6, 2008, appellant's representative responded to the statement provided by the employing establishment. His assertions included that the employing establishment improperly did not provide a copy of medical records to OWCP from the February 2008 mental health clinic visit and did not properly file and protect such records.

In a March 23, 2009 decision, OWCP's hearing representative affirmed the June 4, 2008 decision. She found that the actions discussed by appellant's representative were administrative in nature. OWCP's hearing representative also found that there was no error in the administrative actions.

On March 20, 2010 appellant's representative requested reconsideration and submitted additional evidence. He repeated his arguments which included that appellant was not provided with a copy of the February 13, 2008 medical report compiled by the employing establishment. Appellant's representative alleged that the report was "suppressed" and a violation of the regulations. Furthermore, he noted that OWCP had not considered the medical documentation.

On March 23, 2010 OWCP received an undated report from Barbara A. Batchelor, a social worker, who related appellant's description of events that she believed contributed to her condition. They included conflicts with her coworkers and her bosses. Ms. Batchelor also noted conflicts with her family. She advised that appellant entered psychotherapy on December 8, 2008 and stopped attending on January 6, 2010 due to financial difficulties. Ms. Batchelor diagnosed several conditions which included major depression, obsessive-compulsive disorder, post-traumatic stress disorder and a tumor requiring breast surgery. She also noted that appellant had friends but was socially isolated due to unemployment.

By decision dated April 19, 2010, OWCP denied appellant's request for reconsideration on the grounds that her request neither raised error in the prior decision, substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

² 5 U.S.C. § 8128(a).

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

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 OWCP without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on March 20, 2010. The underlying issue on reconsideration was whether she established a compensable factor of employment with regard to her claim that she sustained an emotional condition in the performance of duty. However, appellant did not provide sufficient evidence or argument to require OWCP to reopen the claim for a merit review.

In her March 20, 2010 request for reconsideration, appellant’s representative essentially reiterated his previous arguments. This involved allegations that appellant was not provided with a copy of the February 13, 2008 medical report compiled by the employing establishment and this violated the regulations. Furthermore, appellant’s representative noted that OWCP had not considered the medical documentation. The Board notes that he merely reiterated appellant’s previous contentions regarding her employer’s actions which she believed were stressful. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁵ Assertions that OWCP should consider the medical evidence also does not show that OWCP erroneously applied a point of law or advanced a relevant legal argument not previously considered. This is because the underlying reason for the denial of the claim is factual in nature; appellant did not establish a compensable factor of employment as a cause of her claimed condition. Until a compensable employment factor is established, it is premature for OWCP to consider the medical evidence.⁶

Appellant also did not provide any relevant and pertinent new evidence to establish that she sustained an emotional condition in the performance of duty. She submitted a report from Ms. Batchelor, a social worker. To be relevant, the evidence submitted must address whether appellant established any compensable factors of employment. Ms. Batchelor’s general repetition of appellant’s account of events is not relevant to establishing whether a compensable work factor is established as there is no indication that Ms. Batchelor was a witness to any of the alleged incidents or otherwise has unique knowledge of such incidents. The Board has held that

³ 20 C.F.R. § 10.606(b).

⁴ *Id.* at § 10.608(b).

⁵ *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

⁶ *See Alberta Dukes*, 56 ECAB 247 (2005) (only when a compensable work factor has been established is the medical evidence relevant to determining whether a claimant has established a work-related emotional condition).

the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.⁷

Consequently, the evidence and argument submitted by appellant on reconsideration does not satisfy any of the three regulatory criteria for obtaining merit review of a claim. Therefore, OWCP properly denied her request for reconsideration.

On appeal appellant's representative repeated his prior arguments regarding consideration of the medical evidence and the employing establishment's release of medical information. As discussed, these assertions are insufficient to require OWCP to reopen the claim for a merit review.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

⁷ *Robert P. Mitchell*, 52 ECAB116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000). To the extent that Ms. Batchelor's report was offered as medical evidence, it is not relevant for the reasons discussed *infra*, note 6 and accompanying text, and also because a social worker is not a physician under FECA. 5 U.S.C. § 8101(2); *see Ernest St. Pierre*, 51 ECAB 623, 626 (2000) (reports of a social worker do not constitute competent medical evidence as a social worker is not a physician as defined by 5 U.S.C. § 8101(2)).

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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