

**United States Department of Labor
Employees' Compensation Appeals Board**

T.H., Appellant

and

**U.S. POSTAL SERVICE, ROCKY MOUNT
ANNEX, Rocky Mount, NC, Employer**

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**Docket No. 13-979
Issued: July 19, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 18, 2013 appellant filed a timely appeal from a February 22, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The most recent OWCP merit decision is dated July 5, 2012. There is no merit decision within 180 days of March 18, 2013 the date appellant filed her appeal with the Board. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

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

On appeal, appellant contends that she sustained an emotional condition injury in the performance of duty as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2011 appellant, then a 47-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2011 at 12:20 p.m., she sustained post-traumatic stress disorder and major depressive disorder when verbally attacked by an angry woman in a restaurant parking lot. She alleged that the woman followed her for several blocks in a car, pulled in front of her postal vehicle and began yelling at her. Appellant called 911. After officers were dispatched, she returned to the employing establishment. Appellant alleged that, when she reported the incident, a postmaster verbally abused her. She stopped work on December 5, 2011.

A December 5, 2011 police report showed that at 12:24 p.m. that day, appellant called 911 asserting that one female and two male subjects followed her in their vehicle and that the female verbally accosted her. Officers were dispatched to the scene.

In a December 5, 2011 statement, an associate of appellant noted picking her up from the employing establishment after the alleged incident. Appellant appeared distraught.

In a December 9, 2011 letter, the postmaster stated that, on December 5, 2011, appellant reported that a “lady followed her to her lunch spot and jumped out and started yelling at her about almost hitting her car.” Appellant appeared calm and agreed to finish one of her routes but was concerned about another in proximity to where the woman allegedly confronted her. Her mood then changed abruptly and she accused the postmaster of not caring about her safety. Appellant then asked for claim forms.

In a December 9, 2011 statement, an employing establishment manager stated that, while appellant met with the postmaster on December 5, 2011, there was progressively louder noise, culminating in appellant’s declaration that she would file a claim.

In a December 28, 2011 letter, OWCP advised appellant that additional evidence was needed to establish her claim, including factual evidence substantiating the December 5, 2011 incident and a statement from her physician explaining how that incident would cause the claimed post-traumatic stress disorder and major depressive disorder. Appellant was afforded 30 days to submit such evidence. In response, she submitted December 8 and 29, 2011 work restrictions from Dr. Judith S. Yongue, an attending psychiatrist, who related appellant’s account of the December 5, 2011 incident and alleged confrontation with the postmaster.

By decision dated January 30, 2012, OWCP denied appellant’s claim finding that she failed to establish any compensable factors of employment. It found that she submitted insufficient evidence that the December 5, 2011 incident occurred as alleged or that the postmaster had verbally assaulted her when she reported the incident.

In an April 18, 2012 letter, appellant requested reconsideration. She asserted that new evidence would establish that the December 5, 2011 incident occurred in the performance of duty. Appellant contended that she had no nonoccupational stressors and that her psychiatric problems were work related.

In a March 5, 2012 statement, a union representative stated that the postmaster initially refused to provide appellant a claim form as ““nothing happened to cause an injury to

[appellant].” He later provided the forms. A coworker provided a March 10, 2012 statement alleging that, on December 5, 2011, a postmaster snatched a Form CA-17 from appellant’s hand and walked away. A second coworker submitted a March 27, 2012 statement noting that appellant telephoned the police on December 5, 2011 when an angry individual approached her in front of a restaurant.

Appellant also submitted a February 17, 2012 report from Dr. Celeste Good, an attending psychiatrist, who stated that the December 5, 2011 incident exacerbated appellant’s preexisting psychiatric conditions. Dr. Good renewed work restrictions through March 2012.

By decision dated July 5, 2012, OWCP affirmed the January 30, 2012 decision denying appellant’s claim, finding that the additional evidence was not sufficient to establish any compensable work factors. It found that appellant’s perception that she was unsafe delivering mail after the December 5, 2011 incident was self-generated and therefore not compensable. OWCP further found that the factual statements did not establish that she was refused claim forms or that the postmaster yelled at her.

In a January 25, 2013 letter, appellant requested reconsideration. She reiterated that the December 5, 2011 parking lot incident and confrontation with a postmaster occurred as alleged. Appellant submitted letters to the employing establishment requesting work assignments and accommodations. She also submitted copies of the coworker statements previously of record. Appellant also provided reports from Dr. Good dated from January 19 to November 21, 2012. Dr. Good diagnosed major depressive disorder and post-traumatic stress disorder due to the December 5, 2011 confrontations. She restricted appellant from contact with the postmaster.

By decision dated February 22, 2013, OWCP denied reconsideration on the grounds that the evidence submitted in support of appellant’s February 4, 2012 request was irrelevant to the claim. It found that the medical evidence was irrelevant as appellant had not established a compensable factor of employment. OWCP further found that the March 2012 statements were previously considered and that the work assignment correspondence was irrelevant. It further found that appellant did not advance a new legal argument or provide relevant new evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by it; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁴

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

In support of a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁵ Appellant need only submit relevant, pertinent evidence not previously considered by OWCP.⁶ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether it properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁷

ANALYSIS

OWCP issued a January 30, 2012 decision finding that appellant did not establish that she sustained an emotional condition in the performance of duty as she failed to establish any compensable work factors. Appellant requested reconsideration on April 18, 2012 asserting that the claimed December 5, 2012 confrontations with a woman at a restaurant parking lot and her postmaster occurred as alleged. OWCP denied modification by decision issued July 5, 2012 finding that the evidence failed to establish compensable work factors.

Appellant again requested reconsideration on January 25, 2013, reiterating that the two December 5, 2012 incidents occurred as alleged in the performance of duty. OWCP denied reconsideration by February 22, 2013 decision, finding that the evidence submitted was either irrelevant to the claim or duplicative of documents previously submitted.

The Board does not have jurisdiction over the July 5, 2012 decision. The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her January 25, 2013 application for reconsideration, she did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific legal error or advance a new and relevant legal argument. She contends that the evidence demonstrated that the alleged December 5, 2012 confrontations in the restaurant parking lot and with her postmaster occurred as alleged and were in the performance of duty.

The underlying issue in this case concerns whether appellant has established a compensable factor of employment. To be relevant to the claim, the evidence submitted on reconsideration must address this issue. Appellant submitted her letters regarding work assignments and accommodations. These documents do not address the factual issue of whether she established a compensable work factor. Similarly, appellant submitted reports from Dr. Good, an attending Board-certified psychiatrist, which do not contain factual evidence corroborating the December 5, 2012 incidents either with the woman in the restaurant parking lot or with the postmaster. The Board has held that evidence which does not address the particular issue involved is insufficient to warrant reopening a claim for merit review.⁸ Appellant also submitted copies of March 2012 coworker statements previously of record. However, evidence

⁵ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁶ *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

⁷ *Annette Louise*, 54 ECAB 783 (2003).

⁸ *D.K.*, 59 ECAB 158 (2007).

which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁹

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant asserts that she sustained an injury in the performance of duty as alleged. As stated above, the Board does not have jurisdiction over the merits of the claim. The issue on appeal is whether OWCP properly denied appellant's request for reconsideration. Appellant submitted insufficient evidence on reconsideration to warrant a review of the claim on its merits.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2013
Washington, DC

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

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

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

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).