

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

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**I.K., Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION,  
Leesburg, VA, Employer**

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**Docket No. 14-587  
Issued: June 26, 2014**

*Appearances:*

*Stephen D. Scavuzzo, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 15, 2014 appellant, through her attorney, filed a timely appeal of a September 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As more than 180 days elapsed from the issuance of the September 10, 2012 merit decision to the filing of this appeal on January 15, 2014, the Board has no jurisdiction over the merits of the case.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over only the September 12, 2013 nonmerit decision.

**ISSUE**

The issue is whether OWCP properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> For final adverse OWCP decisions issued prior to November 19, 2008, a claimant has up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2) (2007). For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e) (2009); *R.C.*, Docket No. 10-2371 (issued July 14, 2011).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

On appeal, appellant's attorney asserts that OWCP erred in denying merit review because new legal arguments were submitted with the reconsideration request.

### **FACTUAL HISTORY**

On December 1, 2011 appellant, then a 38-year-old air traffic control specialist, submitted an occupational disease claim alleging post-traumatic stress disorder, anxiety and depression. She had retired on a medical disability as of March 25, 2011.<sup>3</sup> OWCP denied the claim in a February 17, 2012 decision, noting that appellant did not submit factual evidence of specific employment factors that she felt led to her claimed injury.<sup>4</sup>

Appellant, through her attorney, timely requested a hearing that was held on June 26, 2012. She testified that she had filed an Equal Employment Opportunity Commission (EEOC) claim. Subsequent to the hearing she submitted additional evidence, including an EEOC settlement agreement with the employing establishment that was signed on November 11 and 14, 2011. Appellant also submitted an EEOC order dated November 18, 2011 dismissing EEOC claims 570-2009-00529X and 570-2010-00334X, based on the settlement agreement.

On September 10, 2012 an OWCP hearing representative affirmed the February 17, 2012 decision, finding that appellant did not establish any compensable factors of employment.

On August 12, 2013 appellant, through her attorney, requested reconsideration. He submitted a copy of appellant's opposition to summary judgment dated September 23, 2009 that was filed with the EEOC regarding claim number 570-2009-00529X. Counsel maintained that in response to the pleading, EEOC did not dismiss appellant's complaint, but ordered the parties to mediation where a substantial settlement was reached.

In a nonmerit decision dated September 12, 2013, OWCP denied appellant's reconsideration request. It found that the evidence submitted was not sufficient to warrant merit review because it consisted of a document presented to another governmental agency for review. It noted that the material did not establish a final decision in the EEOC and was not sufficient for purposes of establishing a compensable work factor under FECA.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP 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.<sup>5</sup> Section 10.608(a) of the Code of Federal Regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>6</sup> This section provides that the application for reconsideration must be submitted

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<sup>3</sup> The employing establishment noted that on June 8, 2009 appellant began administrative, nonoperational duties and did not miss substantial periods from work until her disability retirement.

<sup>4</sup> OWCP mailed a development letter to appellant on December 20, 2011. In response, appellant furnished medical evidence only but did not submit a statement describing specific employment factors.

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.608(a).

in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

### ANALYSIS

The only decision before the Board in this appeal is the September 12, 2013 decision of OWCP, denying appellant's application for review. There is no OWCP merit decision within the Board's jurisdiction.<sup>9</sup>

The Board notes that appellant's counsel asserted that OWCP did not review new legal arguments submitted with the reconsideration request. Counsel contended that discriminatory treatment had long been compensable and attached a copy of appellant's opposition to summary judgment before the EEOC under claim number 570-2009-00529X. He stated in response to the motion that EEOC did not dismiss appellant's claim, but ordered the parties to mediation where a substantial settlement was reached. The referenced EEOC settlement agreement between appellant and the employing establishment stated that it did not constitute either an admission or concession of wrongdoing by either of the parties and would not be represented as such by anyone. An EEOC order that followed on November 18, 2011, dismissed EEOC claims 570-2009-00529X and 570-2010-00334X. Both the settlement agreement and the EEOC order were reviewed by the hearing representative in rendering the September 10, 2012 merit decision. Appellant's motion in opposition to summary judgment before EEOC is essentially duplicative, because it was a pleading submitted to another government agency on which the settlement agreement and November 15, 2011 EEOC order was based. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup> Further, the motion pertains to allegations found compensable by the hearing representative. 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).<sup>11</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), the pleading is of no probative value on the issue of whether she established a compensable factor under FECA. Appellant therefore did not submit relevant and pertinent new evidence not previously considered by OWCP.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied her reconsideration request.

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<sup>7</sup> *Id.* at § 10.608(b)(1) and (2).

<sup>8</sup> *Id.* at § 10.608(b).

<sup>9</sup> *Supra* note 1.

<sup>10</sup> *J.P.*, 58 ECAB 289 (2007).

<sup>11</sup> 20 C.F.R. § 10.606(b)(2).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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