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J.A., Appellant	)	
	)	
and	)	Docket No. 12-777
	)	Issued: November 16, 2012
DEPARTMENT OF LABOR, OFFICE OF	)	
WORKERS' COMPENSATION PROGRAMS,	)	
Jacksonville, FL, Employer	)	
	)	

Oral Argument October 2, 2012

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On February 23, 2012 appellant filed a timely appeal of a January 31, 2012 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 merit decision of March 31, 2011 to the filing of this appeal, the Board has no jurisdiction over the merits of the case, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.²

² OWCP procedures provide that when a reconsideration decision is delayed beyond 90 days and the delay jeopardizes the claimant's right to have review of the merits of the case by the Board, OWCP should conduct a merit review. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (October 2011); see *Janice M. Hatcher*, 55 ECAB 155 (2003). In this case, however, even had OWCP issued a decision within 90 days, the 90th day, September 28, 2011, was more than 180 days past the March 31, 2011 merit decision. Moreover, even though appellant requested reconsideration on June 29, 2011, she merely checked an OWCP form and did not submit argument or evidence in support of her request until September 1, 2011.

ISSUE

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

On appeal, appellant asserts that the evidence submitted with her June 29, 2011 reconsideration request was sufficient to grant merit review.

FACTUAL HISTORY

On November 19, 2009 appellant, then a 39-year-old claims examiner, filed a traumatic injury claim alleging a tense interchange with a hearing representative at work on November 6, 2009, after which she fell and hit her head. She was treated for depression, head trauma, migraine headaches and a knee injury. OWCP adjudicated the case under File No. xxxxxx912 as an occupational disease claim for an emotional condition. The physical injury claim was adjudicated under File No. xxxxxx789.³

By decision dated February 17, 2010, OWCP denied the claim, finding no compensable factors of employment. Appellant timely requested a hearing, held on July 15, 2010. In a September 14, 2010 decision, OWCP's hearing representative found that appellant established a compensable factor of employment in that she prepared draft decisions which would be returned for revisions, including a small number for the hearing representative implicated in this claim and she had a heavy workload due to staff shortages. The hearing representative denied the claim finding that the medical evidence did not support a causal relationship between the diagnosed emotional condition and the compensable work factors.⁴

In merit decisions dated December 6, 2010 and March 31, 2011, OWCP denied modification of the prior decisions.

On June 29, 2011 appellant requested reconsideration. In September 2011, she submitted transcripts of two telephone conversations and e-mails dated August 17 and 18, 2011 discussing workload issues.

In an April 14, 2011 report, Eileen Krinsky, Ph.D., an attending clinical psychologist, discussed appellant's current condition and recommended that she be allowed to take time off when deemed necessary. She stated that appellant could resume all duties of her position, but not be able to meet deadlines and would find it difficult to adjudicate difficult cases. In a June 10, 2011 report, Dr. Amila Perera, an attending Board-certified family physician, advised that appellant sustained head and knee injuries when she fell at work on November 6, 2009 that caused headaches and aggravated back and neck pain. She indicated that syncope and hyperventilation that occurred that day were a direct result of a disagreement with a coworker.

³ In a separate claim, adjudicated under File No. xxxxxx137, by decision dated October 25, 2007, the Board found that appellant did not establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment and that OWCP properly denied her request for review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁴ The record contains medical evidence diagnosing depression and adjustment disorder.

In an August 30, 2011 statement, appellant again described the events of November 6, 2009 and maintained that her office was understaffed and that her performance was not rated properly after the instant claim was filed, that she had been sent degrading e-mails and that she had filed an Equal Employment Opportunity (EEO) claim. She referenced the medical evidence of record and concluded that it established that she sustained an employment-related emotional condition.

In a nonmerit decision dated January 31, 2012, OWCP denied appellant's reconsideration request on the grounds that the evidence submitted was not relevant or pertinent.

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.⁵ Section 10.608(a) of the Code of Federal Regulations (C.F.R.) provides 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).⁶ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ 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.⁸

ANALYSIS

The only decision before the Board is the nonmerit decision of OWCP dated January 31, 2012 denying appellant's application for review. Because there is no OWCP merit decision within the Board's jurisdiction, the Board lacks jurisdiction to review the merits of appellant's claim.⁹

Appellant generally asserted that her claim should be accepted. She also discussed employment factors that occurred after she filed the instant claim, not at issue in this case. Appellant therefore did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.608(a).

⁷ *Id.* at § 10.608(b)(1) and (2) (1999).

⁸ *Id.* at § 10.608(b) (1999).

⁹ *Supra* note 1.

OWCP. Consequently, she was 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).¹⁰

With respect to the third above-noted requirement under section 10.606(b)(2), appellant also referenced medical evidence that had previously been submitted and reviewed by OWCP. The Board has held that evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ While appellant submitted additional evidence, Dr. Krinsky merely discussed appellant's current condition and did not mention the accepted employment factors or discuss causal relationship. Dr. Perera discussed appellant's claim that she sustained a physical injury, adjudicated under File No. xxxxxx789.¹² The hearing representative had previously reviewed the actual tapes of the transcripts of telephone calls and the e-mails concerned a time period well past the instant claim. Appellant did not submit relevant and pertinent new evidence not previously considered by OWCP.

The cases referenced by appellant at oral argument are those in which the Board had jurisdiction to review the merits of her claim. The issue here is whether OWCP properly denied her request for reconsideration.¹³

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.¹⁴

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).

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ *Freddie Mosley*, 54 ECAB 255 (2002).

¹² By decision dated October 25, 2010, OWCP found that appellant did not establish a physical injury on November 6, 2009. This was affirmed by an OWCP hearing representative on May 16, 2011. In a nonmerit decision dated July 20, 2011, OWCP denied appellant's reconsideration request. By order dated September 6, 2012, Docket No. 12-814, the Board dismissed appellant's appeal of the July 20, 2011 decision as untimely.

¹³ Appellant referenced *Charles L. Jenkins*, 40 ECAB 362 (1988) (the Board remanded case to OWCP for further development on the merit issue of whether appellant met his burden of proof to establish employment-related depression); *Arnold Gustafson*, 41 ECAB 131 (1989) (the Board remanded case to OWCP for further development on the merit issue of whether appellant met his burden of proof to establish employment-related coronary disease, noting that the correct standard was whether his employment contributed in any way to his heart condition); *Carolyn King Palermo (Dwayne Palermo)*, 42 ECAB 435 (1991) (the Board remanded case to OWCP to determine if the employee's suicide was employment related). In a later decision, 45 ECAB 308 (1994), the Board found that Mr. Palermo's suicide was not related to his federal employment.

¹⁴ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2012
Washington, DC

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

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

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