



## **ISSUE**

The issue is whether OWCP properly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant argued the merits of her case.

## **FACTUAL HISTORY**

On April 20, 2011 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment, including a heated exchange with her supervisor on March 29, 2011.

By decision dated April 30, 2012, OWCP found that appellant failed to establish a compensable factor of employment. It denied the claim on the basis that the evidence was not sufficient to establish that she was injured in the performance of duty.

Appellant requested an oral hearing before an OWCP hearing representative, which was held on September 25, 2012.

By decision dated December 10, 2012, OWCP's hearing representative affirmed the April 30, 2012 decision.

On March 6, 2013 appellant requested reconsideration. She submitted a March 8, 2013 report from Dr. Michael J. Papantones, Ph.D a licensed clinical psychologist, who advised that her anxiety was due to the treatment she sustained in her job at the employing establishment.

By decision dated April 8, 2013, OWCP denied appellant's request for reconsideration of the merits. It found that she did not submit pertinent new and relevant evidence or show that OWCP erroneously applied or interpreted a point of law not previously considered.

## **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right. It vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by 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 OWCP; or (3) constitute relevant and

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>4</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

pertinent new evidence not previously considered by OWCP.<sup>5</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### ANALYSIS

In support of her March 6, 2013 reconsideration request, appellant submitted a March 8, 2013 report from Dr. Papantones, who indicated that her anxiety was due to the mistreatment she experienced at her job. The Board finds that the submission of this report did not require reopening her case for merit review. It was medical in nature and not relevant to whether appellant established a compensable factor of employment. Therefore, the report does not constitute relevant and pertinent new evidence and is not sufficient to require OWCP to reopen her claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did she submit any relevant and pertinent new evidence not previously considered. The Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.<sup>8</sup>

On appeal, appellant argues the merits of her case. The Board notes that it lacks jurisdiction over the merits of the case.

### CONCLUSION

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

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<sup>5</sup> 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *See L.H.*, 59 ECAB 253 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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