

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 22, 2010 appellant, then a 51-year-old management and program analyst, filed an occupational claim (Form CA-2) alleging an emotional condition causally related to factors of her federal employment. Appellant alleged that she was subject to a hostile work environment, discrimination and retaliation.

By decision dated July 19, 2010, OWCP denied the claim for compensation. It found that appellant did not establish a compensable work factor as she did not establish error or abuse with respect to administrative matters.

Appellant requested a hearing before an OWCP hearing representative, which was held on January 31, 2011. In a decision dated June 7, 2011, the hearing representative affirmed the July 19, 2010 decision. The hearing representative reviewed Board case law regarding error or abuse and harassment, and found the evidence did not establish a compensable work factor.

On December 11, 2012 appellant requested reconsideration of her claim. She argued that she had established compensable work factors and that OWCP had not properly applied Board case law. Appellant reviewed her allegations with respect to leave matters and disciplinary actions, arguing that the employing establishment actions were abusive and harassing. She cited Board case law with respect to the standard for establishing error or abuse and harassment. Appellant resubmitted leave documents, disciplinary actions and e-mails to her supervisor.

By decision dated July 25, 2013, OWCP denied appellant's request for reconsideration. It found the evidence and arguments insufficient to warrant review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² its regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [OWCP] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [OWCP]; or (iii) constitutes relevant and pertinent evidence not previously considered by [OWCP]."³ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

In the present case, appellant submitted an application for reconsideration dated December 4, 2012. She cited generally to Board case law with respect to the requirement that a

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

compensable work factor is established with evidence of harassment, or error or abuse in an administrative matter.

With respect to showing that OWCP erroneously applied or interpreted a specific point of law, appellant did not meet this requirement. Appellant contended that her allegations of harassment and error or abuse were established, but did not show that a specific point of law was erroneously applied or interpreted. As to advancing a relevant legal argument not previously considered by OWCP, the Board finds appellant did not meet this standard. The citation to Board case law with respect to the establishment of a claim for compensation does not itself establish a relevant legal argument not previously considered.⁵ OWCP reviewed appellant's allegations with respect to leave matters, work assignments and disciplinary actions in merit decisions dated July 19, 2010, June 7, 2011 and August 31, 2012. Based on the evidence then of record, it determined that she did not support her allegations of administrative error or abuse. The relevant case law for establishing compensable work factors based on allegations raised by appellant was discussed by OWCP. Appellant did not raise a specific legal argument that was not previously considered. While she may disagree with OWCP's interpretation of the evidence, her disagreement does not establish a new and relevant legal argument.

Regarding the submission of relevant and pertinent evidence not previously considered, the Board finds appellant has not met this requirement. Appellant submitted evidence on December 11, 2012. The Board reviewed the evidence and found that it duplicates the evidence previously of record. The correspondence between appellant and her supervisor, disciplinary letters and leave documents were previously submitted and considered by OWCP prior to the last merit decision on August 31, 2012. The Board finds appellant did not submit relevant and pertinent evidence not previously considered by OWCP.

Appellant therefore did not meet the requirements of 20 C.F.R. § 10.606(b)(2). She 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 submit relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for merit review.

On appeal, appellant argues that she did raise new legal arguments, and OWCP erroneously applied specific points of law. For the reasons noted above, the Board finds that OWCP properly denied merit review in this case.

CONCLUSION

The Board finds OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

⁵ See *P.J.*, Docket No. 13-376 (issued May 10, 2013); *A.C.*, Docket No. 10-1232 (issued January 12, 2011); *Lewis W. Johnson*, Docket No. 03-41 (issued February 11, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2013 is affirmed.

Issued: February 3, 2014
Washington, DC

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

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

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