

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

R.C., Appellant)	
)	
and)	Docket No. 11-267
)	Issued: December 12, 2011
U.S. POSTAL SERVICE, PROCESSING)	
& DISTRIBUTION CENTER, New Orleans, LA,)	
Employer)	
)	

<i>Appearances:</i>	Oral Argument November 10, 2011
<i>Appellant, pro se</i>	
<i>No appearance, for the Director</i>	

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 15, 2010 appellant filed a timely appeal from an August 24, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for a merit review. Because more than 180 days has elapsed between the last merit decision dated February 18, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the August 24, 2010 nonmerit decision.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 11, 2004 appellant, then a 43-year-old mail processor, filed an occupational disease claim attributing her post-traumatic stress disorder to alleged harassment by the employing establishment regarding her attendance following an accepted employment injury.² In an attached statement, she stated that she had an accepted work claim for lumbar muscle strain and that the pain from the condition worsened over time. As a result of the pain from her employment injury, appellant was diagnosed with fibromyalgia and depression. She stated that she was injured on the job in November 2001 when she began to have debilitating back pain and that she was treated for job stress in January 2002. Due to her pain and the medication she was taking for her pain, appellant stated that she missed a lot of work. She stated that on October 4, 2002 she was issued a letter of warning for her work attendance, which added to her stress. Appellant noted that, on November 14, 2002, which was within three days of the anniversary of her son's murder, she was instructed to report for duty at another facility within 48 hours and to bring her work restrictions. She contended that she was singled out as there were about 15 to 20 injured employees who were not issued the instruction to report to a different work facility. On November 15, 2002 appellant stated that a union representative informed her that management was not sending her to another facility, but was asking for volunteers. Next, she alleged that in July 2003 she was forced to take Bundle Sorter Training even though this job was outside her restrictions. Appellant alleged that she was harassed to take this training every day for about a month and was told that she would be fired if she did not take the training. She alleged that she was issued another letter of warning for missing work due to her employment injury on February 2, 2004. Appellant also alleged that the employing establishment denied her request for a renewal of light duty on June 8, 2004.

In August 12, 2004 reports, Dr. Herman D. Colomb, appellant's treating Board-certified psychiatrist, diagnosed chronic severe major depression and post-traumatic stress disorder, which permanently disabled her from working.

In correspondence dated September 3, 2004, OWCP informed appellant that the evidence of record was insufficient to establish her emotional condition claim. It advised her as to the medical and factual evidence required to support her claim.

Appellant, in a September 23, 2005 submission, alleged that her depression, anxiety and stress began around 2001 when management began harassing her and attempting to cause her bodily harm by requiring her to perform work duties beyond her work restrictions for her back. When she informed her supervisor, she was told that she would have to leave the building if she did not do the ordered work. Appellant alleged that she was told she would be terminated if she did not perform the duties that had been assigned to her. As a result, she became depressed and fearful of losing her job because her back condition prevented her from performing the duties assigned to her. On August 11, 2004 appellant alleged that she was ordered off the floor due to her stress condition, which was a result of harassment by management and being required to

² The record contains evidence that appellant filed a claim for a recurrence of disability with respect to an accepted lumbar condition under claim number xxxxxx950. It does not appear from a review of the record and her oral hearing statements that OWCP has adjudicated or issued a final decision on her claim for a recurrence of disability under this claim.

work outside her restrictions for her back condition. She alleged that she was told she could not work on the floor with a stress condition. In addition appellant alleged that she was informed that, before returning to work, certification from her physician regarding her ability to work was required.

By decision dated January 20, 2005, OWCP denied appellant's claim by finding that she failed to establish any compensable work factor.

On February 17, 2005 appellant requested an oral hearing before an OWCP hearing representative.³

By nonmerit decision dated December 26, 2006, OWCP found that appellant abandoned her request for an oral hearing.

Appellant appealed to the Board. By decision dated May 9, 2008, the Board set aside the December 26, 2006 nonmerit decision and remanded to provide her with an opportunity for an oral hearing.⁴

On November 20, 2008 a hearing was held at which appellant testified. Appellant related the incidents and harassment she believed caused or aggravated her condition including being told to get off the floor as she was a safety hazard. She also alleged that the employing establishment ignored her work restrictions for an accepted back condition. Appellant stated that a supervisor in charge of the limited-duty work unit made a sexual and vulgar comment to her. She reported this comment to the union which resulted in the supervisor apologizing to her. However, following the apology, this supervisor harassed appellant to the point where it became unbearable.

By decision dated February 17, 2009, an OWCP hearing representative affirmed the denial of appellant's claim.

On February 27, 2009 appellant requested reconsideration. She also filed an appeal with the Board, which was dismissed by the Board on May 5, 2009 as she had filed a request for reconsideration with OWCP.⁵

In a nonmerit decision dated April 14, 2009, OWCP denied reconsideration.

On April 23, 2009 appellant requested reconsideration of the denial of her stress claim. She contends that OWCP ignored or overlooked the evidence establishing her claim. Appellant contended that the action of August 11, 2004 when she was removed from the work floor

³ Appellant also checked that she was requesting reconsideration. The hearing was initially scheduled for December 7, 2006, but the letter informing her of the scheduled hearing was returned as undeliverable. A memorandum to the file notes that OWCP attempted to contact appellant regarding her oral hearing, but did not have a current address or telephone number.

⁴ Docket No. 08-132 (issued May 9, 2008).

⁵ Docket No. 09-1050 (issued May 5, 2009).

because she was deemed to be a safety hazard is a compensable factor of employment. She also alleged that she was denied reasonable accommodations for her accepted work injury and was never sent for a fitness-for-duty examination.

By nonmerit decision dated February 18, 2010, OWCP denied reconsideration.

On June 5, 2010 appellant requested reconsideration. She alleged that she submitted all the required information and could not understand why OWCP refused to expand the conditions from her accepted back claim. In support of her claim, appellant submitted medical evidence relative to the treatment of her back condition from Dr. Thomas Whitecloud, III, a treating Board-certified orthopedic surgeon; Dr. James Ricciardi, a treating Board-certified orthopedic surgeon; Dr. Wanda Timplon, a treating Board-certified family practitioner; Dr. Vinod Dasa, a treating Board-certified orthopedic surgeon; and Dr. Christopher Meyers, a treating Board-certified psychiatrist. Additionally, statements dated June 5 and July 28, 2010 reiterated how she sustained a back injury at work and why her emotional condition was employment related.

By nonmerit decision dated August 24, 2010, OWCP denied reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁶ OWCP's 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 OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁷ 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.⁸ 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.⁹

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

⁶ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁷ 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218, issued July 24, 2009.

⁸ *Id.* at § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048, issued July 9, 2009.

⁹ *Id.* at § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440, issued March 16, 2009.

¹⁰ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

ANALYSIS

The only decision before the Board on this appeal is OWCP's August 24, 2010 nonmerit decision denying appellant's application for reconsideration of OWCP's February 18, 2010 decision concerning the denial of her emotional condition claim on the grounds that the evidence was insufficient to establish any compensable factors of employment. Thus, the issue presented on appeal is whether her June 5, 2010 reconsideration request met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

The Board finds that appellant did not provide any relevant or pertinent new evidence to the issue of whether she established a compensable employment factor. Appellant did not submit evidence to show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered.

On reconsideration and at oral argument before the Board, appellant repeated that her injury was directly related to her employment. She attributed her condition to harassment by the employing establishment because of work restrictions resulting from an accepted employment injury and that her removal from the work floor and being called a safety hazard was the cause of her mental stress. Additionally, appellant alleged that she was issued warnings regarding her attendance when she was unable to work because of her accepted employment injury. Furthermore, she repeated that a male supervisor made an inappropriate sexual comment to her. Appellant denied that the murder of her son was the cause of her current stress as it occurred several years prior to the alleged work incidents. These arguments are not new and are repetitious of evidence already of record, and therefore cumulative in nature. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹²

Although appellant also submitted new medical evidence from Drs. Whitecloud, Ricciardi, Timpton, Dasa and Meyers, the underlying issue in the case is not medical in nature. As she has failed to establish a compensable employment factor, the medical reports are not relevant.¹³ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

At oral argument, appellant alleged that she had submitted evidence to OWCP supporting her claim, but that it had been lost during the flooding caused by Hurricane Katrina. She also noted that she had filed a recurrence claim on her accepted back condition, which has not been adjudicated by OWCP. Appellant contended that her removal from the work floor because her supervisor deemed her a safety hazard is compensable. She also contended that inappropriate sexual remarks made by a supervisor to her were also responsible for her emotional condition and were employment related. However, allegations alone are insufficient to establish a factual

¹² See *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005); *A.K.*, Docket No. 09-2032 (issued August 3, 2010).

¹³ See *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

basis for an emotional condition claim.¹⁴ The record contains no supporting evidence of appellant's allegations and, thus, she failed to establish any compensable factor of employment.

Appellant did not provide any relevant and pertinent new evidence with regard to establishing a compensable employment factor. Consequently, the evidence submitted by her on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, OWCP properly denied her request for reconsideration.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2010 is affirmed.

Issued: December 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ *Ronald K. Jablanski*, 56 ECAB 616 (2005).