

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

D.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 11-136
Issued: September 9, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 25, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs (OWCP) nonmerit decision dated May 24, 2010, denying her request for further merit review of her claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision. Because more than 180 days has elapsed between the most recent merit decision of OWCP, May 14, 2009 and the filing of this appeal on October 25, 2010, the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 2007 appellant, then a 54-year-old general clerk, filed a traumatic injury claim Form CA-1 alleging that on that date she was involved in a verbal altercation with a coworker who yelled and threatened her with bodily harm. She further alleged that her preexisting asthma was aggravated and she sustained chest pains and headaches while in the performance of duty. Appellant stopped work on September 21, 2007.

In a separate statement also dated September 21, 2007, appellant further noted that an argument erupted with another coworker while she was speaking with a union steward. She alleged that the coworker got in her face and threatened her and blocked her from leaving. Appellant alleged that the coworker stepped on her foot and she could not move. She alleged that this was the second time that her coworker threatened her and management told her that she should not include the coworker in her conversations.

In a September 21, 2007 statement, Ronna Rice, appellant's coworker, explained that the incident occurred because appellant was alleging that other clerks were letting friends and "anyone" in the building. She indicated that she entered the conversation to deny the allegations and that appellant approached her and put her foot on top of her foot and she "[could not] move."

In a September 23, 2007 statement, Kenneth Trusnik, a supervisor of distribution operations, noted that on September 21, 2007, an altercation occurred between appellant and Ms Rice. He explained that five minutes prior to the incident, he was discussing a security issue with appellant, "which is what the incident was about to begin with. We were in the back copy room and she answered very loudly so that the other clerks in the office could certainly hear her." Mr. Trusnik expressed the opinion that appellant was insinuating that the other clerks were doing something against the employing establishment's regulations. He noted that Ms. Rice overheard appellant and asked her not to bring her name into any conversations, and the resulting argument ensued. Furthermore, Mr. Trusnik noted that while appellant indicated that she feared for her life, he questioned her why she feared for her life. He noted that he asked her why she ran in the direction of Ms. Rice as opposed to going in the back room, where the security office was located. Mr. Trusnik noted that "no answer was given." He also noted that appellant was the aggressor as she stomped on Ms. Rice's foot.

In an October 25, 2007 statement, appellant alleged that she was threatened, harassed and intimidated by management since May 2006. She alleged that on September 21, 2007, she was having a conversation about allowing individuals through the door without supervisors signing them in. Appellant alleged that other employees let their friends in without a supervisor signing them in. She alleged that she was working in an unsafe and hostile work environment and repeated that Ms. Rice blocked her path, yelled at her and threatened her.

By decision dated November 9, 2007, OWCP denied the claim finding the claimed injury was not sustained as alleged. Appellant requested a hearing on March 29, 2008. In a June 5, 2008 decision, OWCP denied the request finding the request was not timely filed.

By letter dated June 16, 2008, appellant requested reconsideration. In a letter dated May 7, 2009, she inquired into the status of her reconsideration request. Appellant reiterated that

she was threatened and assaulted by a coworker. She alleged that Ms. Rice, came to her desk and assaulted her.

In a May 14, 2009 decision, OWCP again denied the claim, finding that there were no incidents established as compensable factors of employment. It found that the September 21, 2007 incident involving a verbal altercation with her coworker occurred but was not compensable as it involved an administrative issue, securing the work area. It found there was no evidence to establish administrative error or abuse.

In a letter dated May 10, 2010, appellant requested reconsideration. She alleged that the injury was directly related to her employment. Appellant reiterated that Ms. Rice was the cause of her bodily harm and mental stress and that she threatened her and blocked her from leaving a threatening environment. Additionally, she repeated that she was not allowed to let employees or other visitors in the building while other employees were treated differently. Appellant alleged that she was harassed and intimidated by Ms. Rice and management since she received her section bid in May 2006.

OWCP also received October 1, 2009 treatment notes from Dr. Rachel A. Koelsch, a Board-certified allergist and immunologist, who diagnosed numerous conditions, including asthma, obesity, hypertension, stress reaction, emotional condition and adjustments disorder with mixed mood.

By decision dated May 24, 2010, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(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.”³

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and requested reconsideration on May 10, 2010. However, she 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, appellant repeated that her injury was directly related to her employment and that Ms. Rice was the cause of her bodily harm and mental stress. She also repeated that Ms. Rice threatened her and blocked her from leaving a threatening environment. Additionally, appellant repeated that she was not allowed to let employees or other visitors in the building while other employees were treated differently. Furthermore, she repeated that she was harassed and intimidated by Ms. Rice and management since she received her section bid in May 2006. 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.⁵

Although appellant also submitted a new report from Dr. Koelsch dated October 1, 2009. The underlying issue in the case is not medical in nature. Instead, it involves appellant's failure to establish as factual a compensable employment factor. This medical report is not relevant as no compensable employment factors have been established.⁶ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant did not provide any relevant and pertinent new evidence with regards to whether she has established 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.

On appeal, appellant submitted new medical evidence and alleged that this supported her claim for an emotional condition. However, the Board cannot consider this evidence, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision.⁷

⁴ *Id.* at § 10.608(b).

⁵ See *Betty A. Butler*, 56 ECAB 545 (2005).

⁶ See *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (if a claimant has not established any compensable employment factors, OWCP need not consider the medical evidence).

⁷ 20 C.F.R. § 501.2(c); see *Steven S. Saleh*, 55 ECAB 169 (2003).

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 May 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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