

FACTUAL HISTORY

On September 29, 2007 appellant, then a 36-year-old part-time flexible distribution and window clerk, filed an occupational disease claim alleging that she developed an emotional condition as a result of being harassed by her superiors. She became aware of her condition in September 1995 and realized it was related to her employment on October 2006. Appellant stopped work on March 6, 2007.

In an undated statement, appellant alleged that she failed to receive adequate training for a scheme test and her coworkers made sarcastic comments regarding her lack of knowledge. In November 2006, she was not paid for reimbursable mileage and filed a grievance. In January 2007, appellant opened an outside door for air and her coworkers made unkind remarks. She asserted that, on January 16 and February 9, 22 and 26, 2007, Leslie Wilcox, a supervisor, improperly discussed attendance issues and instructed her to provide medical documentation on the days she attended medical appointments. On February 6, 2007 appellant's coworkers commented on the workroom floor that they had to be careful what they said or they would be turned in to management. Appellant stated that, on February 27, 2007, a mystery shopper presented at the retail counter. Since she did not receive a 100 percent evaluation her supervisor criticized her for the results. Appellant alleged that on March 6, 2007 she had a nervous breakdown at work as the employing establishment was attempting to fire her.

Appellant submitted notes from Dr. Paul J. Slavik, a Board-certified internist, dated December 1 to 28, 2006. Dr. Slavik advised that she was being treated for medical issues and could not work more than 48 hours in a seven-day week. On January 19, 2007 he stated that appellant could not work increased hours as extended hours caused migraine headaches. On February 9, 2007 Dr. Slavik noted that she was on a restricted work schedule due to migraine headaches and could not work over 10.5 hours a day or 48 hours in a five-day workweek. Appellant submitted a February 9, 2007 letter of warning for failure to follow instructions.

By letter dated October 12, 2007, OWCP advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit such evidence.

Appellant submitted a March 1, 2007 note from Dr. Slavik who treated her for panic attacks exacerbated by her work environment. She submitted a police incident report dated March 6, 2007. A March 8, 2007 Postal Inspector investigative memorandum noted that, on March 7, 2007, appellant was arrested at work for disorderly conduct and resisting arrest after she took an overdose of medications. Appellant also submitted a March 8, 2007 notice of placement in a nonduty without pay status and grievance notices dated April 3 and May 1, 2007 disputing her employer's decision to place her in off-duty status.

In a November 30, 2007 decision, OWCP denied appellant's claim finding that her emotional condition did not occur in the performance of duty. It noted that she did not establish a compensable factor.

On December 30, 2007 appellant requested a review of the written record. She submitted a December 30, 2007 statement reiterating her allegations of harassment by management. Appellant submitted reports from Dr. Slavik, incident reports dated March 6, 2007 and a

March 8, 2007 Postal Inspector Memorandum, all previously of record. She submitted a prearbitration agreement dated November 14, 2007, a March 13, 2007 request for reassignment and a notice of removal dated June 8, 2007.

In a November 1, 2007 statement, Ed Lauersdorf, appellant's supervisor, noted having a good working relationship with her but addressed issues with attendance, scheduled work hours and insubordination.

On April 14, 2008 an OWCP hearing representative affirmed the November 30, 2007 decision. She found that appellant did not establish a compensable factor of employment.

On April 11, 2009 appellant requested reconsideration. She submitted reports from Dr. Slavik dated December 20, 2006 to March 1, 2007; a May 5, 2007 notice of removal; a grievance and a November 14, 2007 prearbitration agreement, all previously of record. In a March 1, 2007 note, Dr. Slavik treated appellant on that date. Appellant submitted congressional and senatorial inquiries into the status of her compensation claim.

In a July 16, 2009 decision, OWCP denied modification of the prior decisions.

In a letter dated July 1, 2010 and an appeal form dated July 14, 2010, appellant requested reconsideration. She asserted that Dr. Slavik imposed work restrictions to alleviate further complications in her condition; however, the employing establishment failed to follow the restrictions and required her to work in excess of 48 hours a week. Appellant referenced Dr. Slavik's treatment notes which indicated that she was limited to working no more than 48 hours in a seven-day workweek. She further referenced pay records noting that, during pay periods 25 and 26, she worked over 48 hours a week in violation of her work restrictions.³ Appellant asserted that the employing establishment disregarded her restrictions and her health deteriorated, which was a compensable factor of employment. She submitted prescription notes from Dr. Slavik previously of record. Appellant also submitted a March 12, 2010 letter to OWCP stating that she first became aware of her condition in 2005, prior to the events of 2006 and 2007, that aggravated her condition and disability.

In a September 17, 2010 decision, OWCP denied appellant's reconsideration request finding that it was insufficient to warrant further review of the merits.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may

³ These pay records were not attached to her correspondence.

⁴ 5 U.S.C. § 8128(a).

obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain 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.”⁵

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.⁶

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁷

ANALYSIS

OWCP denied appellant’s claim on the grounds that the evidence submitted was insufficient to establish any compensable employment factor arising in the performance of duty. It denied her July 1, 2010 reconsideration request, without a merit review and appellant appealed this decision to the Board. The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim.

In her July 1, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She asserted that Dr. Slavik imposed work restrictions on December 1 and 20, 2006 to alleviate further complications in her condition; however, the employing establishment failed to follow those restrictions and required her to work in excess of 48 hours a week. Appellant referenced pay records noting that pay periods 25 and 26 reveal she worked over 48 hours a week in violation of her work restrictions. She noted that the employing establishment disregarded her restrictions and physical condition and as a result her health deteriorated which established a compensable factor of employment. Appellant’s general statements and allegations did not establish that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. Consequently, she is 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b).

⁷ *See Daniel Deparini*, 44 ECAB 657 (1993).

A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case. Appellant submitted prescription notes from Dr. Slavik dated December 1 and 20, 2006 and March 1, 2007. These notes are not relevant because they are duplicative of Dr. Slavik's notes dated December 1 and 20, 2006 and March 1, 2007 previously of record and considered by OWCP properly determined that this evidence was cumulative and did not constitute a basis for reopening the case for a merit review. Appellant also submitted a March 12, 2010 letter correcting her date of diagnosis for her anxiety disorder to 2005. However, as noted, this evidence is not relevant since the underlying issue is whether she has established a compensable factor of employment with regard to her claim for an emotional condition. Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant reiterates her allegations that the employing establishment failed to provide reasonable accommodations pursuant to medical documentation from her physician limiting her work hours. She noted that she filed an Equal Employment Opportunity complaint and in a September 13, 2010 decision it was determined that the agency was failed to provide reasonable accommodations for her disability and failed to engage in good-faith process which resulted in the agency removing appellant from her position. The Board notes that it does not have jurisdiction over the merits of this case, rather its jurisdiction is limited to whether OWCP abused its discretion in denying merit review. As noted, appellant 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. The Board notes that its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision; therefore, the Board is unable to review new evidence submitted by appellant on appeal.⁸

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁸ 5 U.S.C. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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