

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

---

**B.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grottoes, VA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 11-519  
Issued: September 20, 2011**

*Appearances:*  
*Rodger L. Smith, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 27, 2010 appellant, through her representative, filed a timely appeal from the June 28, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied her request for reconsideration.<sup>1</sup> As more than 180 days has lapsed from the issuance of OWCP's last merit decision of May 6, 2009, to the filing of this appeal on December 27, 2010, pursuant to the Federal Employees' Compensation Act (FECA)<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction to review OWCP's nonmerit decision.

**ISSUE**

The issue is whether OWCP properly denied appellant's May 6, 2010 request for reconsideration.

---

<sup>1</sup> The delivery date of appellant's notice of appeal, December 28, 2010, would make her appeal untimely by one day. The appeal is therefore considered to have been timely filed on the date of mailing, December 27, 2010. 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 25, 2006 appellant, a 44-year-old rural carrier, filed a claim alleging that she sustained a mental injury as a result of the harsh way her supervisor talked to her. OWCP accepted her claim for generalized anxiety disorder.

On July 18, 2007 OWCP notified appellant of a proposed decision to rescind the acceptance of her claim and terminate all benefits. It explained that it failed to make required findings of fact concerning the allegations and circumstances relating to her claim.

On March 17, 2009 OWCP notified appellant that it had received witness statements from postal employees and patrons and was offering her an opportunity to submit any comments.

On May 6, 2009 OWCP rescinded its acceptance of appellant's claim and terminated compensation benefits. It found that the evidence established no compensable factor of employment.

On May 6, 2010 appellant requested reconsideration. She argued that she was not emotional or verbally able to respond meaningfully to the witness statements OWCP had received. Appellant stated that in April and May 2009 she was on a variety of strong medications, was in tremendous pain and was very ill. She stated that she was unable to assist in refuting the written statements submitted. It was only recently, appellant explained, that her condition significantly improved. She now believed that she was in a position to be of assistance to counsel in responding to the statements.

Appellant submitted an April 22, 2009 treatment note from a family physician who stated that appellant still had a lot of problems with stress reaction. She had contracted abdominal pain and had multiple treatments. The physician listed her medications, reviewed her systems and diagnosed stress reaction stemming from her relationship with her supervisor. He noted that she was scheduled for other referrals.

Appellant also submitted a May 8, 2009 report from a physician's assistant who noted that she was hospitalized for one week at the end of April, during which time she was treated for chronic abdominal pain, nausea, vomiting and chronic pain issues. She was seen in follow up on May 7, 2009. The physician's assistant noted that appellant was on a number of medications that would preclude her from potentially returning to any workplace; given the large amount of narcotic analgesics, even sedentary employment was out of the question for reliability. Appellant continued to relate the onset of her situational stress, anxiety and depression to what she perceived as harassment, both verbal and apparently physical, from a supervisor at work.

In a decision dated June 28, 2010, OWCP denied appellant's May 6, 2010 request for reconsideration. It found that she failed to provide any new factual evidence to address the issue upon which her claim was denied.

On appeal, appellant resubmits her May 6, 2010 request for reconsideration.

## LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>3</sup> An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

## ANALYSIS

Appellant sent her May 6, 2010 request for reconsideration within one year of OWCP's May 6, 2009 decision to rescind its acceptance of her claim. Her request is therefore timely. The issue before the Board is whether this request met any of the standards for obtaining a merit review of her case.

Appellant's request 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 OWCP erroneously applied or interpreted it.

Appellant's request did not advance a new and relevant legal argument. She explained that she was only recently able to respond in a meaningful way to the statements OWCP received but she made no attempt to do so. Appellant confined her request to matters of personal circumstance; she did not address the underlying issue relevant to OWCP's May 6, 2009 decision.

Appellant's request did not contain relevant and pertinent new evidence not previously considered by OWCP. She submitted medical evidence. The issue in appellant's case was whether the factual evidence failed to establish a compensable factor of employment. Medical documentation of her symptoms and treatment does not address this issue; it has no tendency to

---

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> *Id.* at § 10.606.

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608.

make the existence of a compensable employment factor any more probable than it would be without the medical documentation.<sup>7</sup>

Because appellant's May 6, 2010 request for reconsideration met none of the standards for obtaining a merit review of her case, the Board finds that OWCP properly denied her request. The Board will therefore affirm OWCP's June 28, 2010 decision.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's May 6, 2010 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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

---

<sup>7</sup> Fed. R. Evid. 401 (defining relevant evidence). Further, the evidence appellant submitted does not establish what she intended to show, namely, that she was unable to assist in refuting the statements OWCP had received.