

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

C.K., Appellant)

and)

DEPARTMENT OF LABOR, OCCUPATIONAL)
SAFETY & HEALTH ADMINISTRATION,)
Philadelphia, PA, Employer)

**Docket No. 11-1526
Issued: February 3, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 16, 2011 appellant filed a timely appeal from a January 13, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As the last merit decision was issued on December 2, 2009, more than 180 days from the filing of the appeal, the Board lacks jurisdiction over the merits of this case.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the January 13, 2011 nonmerit decision.

ISSUE

The issue is whether OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

¹ See 20 C.F.R. § 501.3(e).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 2, 2008 appellant, then a 54-year-old industrial hygienist, filed an occupational disease claim alleging that she sustained depression and anxiety as a result of a hostile work environment. She retired effective September 26, 2008.

By decision dated April 17, 2009, OWCP denied appellant's claim finding that she did not establish an injury in the performance of duty. It found that she did not establish that her supervisor or managers harassed and discriminated against her or that the employing establishment erred in placing her on a performance improvement plan (PIP).

On May 13, 2009 appellant requested an oral hearing. At the hearing held on September 10, 2009 she related that she filed an Equal Employment Opportunity complaint because she was not given work consistent with her position description. Appellant experienced stress trying to perform new job duties beginning in 2003 because she lacked the necessary computer skills and did not receive adequate training. She received poor performance evaluations. Appellant was unable to complete her assigned tasks. She maintained that her supervisor yelled at her and slammed a door in her face. Appellant's attorney asserted that she was not claiming discrimination or an inappropriate change in her work assignments but rather that performing her actual work duties caused her condition.

By decision dated December 2, 2009, the hearing representative affirmed the April 17, 2009 decision, as modified, to show that appellant established as a compensable factor of employment that she experienced stress performing her assigned work duties under *Cutler*. The hearing representative found, however, that the medical evidence was insufficient to show that appellant sustained an emotional condition as a result of the compensable work factor.

On November 30, 2010 appellant requested reconsideration. She described in detail her work duties and asserted that she was given work assignments that she did not know how to do and that she did not receive adequate training or resources. Appellant stated that she was placed on a PIP and described the required duties. She alleged that management knew that she did not have the computer expertise to perform the assigned work. Appellant alleged that she sustained stress due to her work assignments and the fear of losing her job. She further maintained that she experienced a hostile work environment. Appellant indicated that she was attaching additional information with her request.

By decision dated January 13, 2011, OWCP denied appellant's request for reconsideration as she did not submit evidence or raise an argument sufficient to warrant reopening the case for further merit review. It found that she had not submitted any medical evidence supporting that she sustained an emotional condition due to the accepted employment factor.

On appeal, appellant argues that OWCP did not consider her November 30, 2010 letter or medical evidence sent by her attorney in October 2009. She described the work factors that she alleged caused her condition, including a change in work assignments and the lack of adequate training and resources.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁹

ANALYSIS

In a decision dated December 2, 2009, an OWCP hearing representative found that appellant's allegation that she experienced stress performing her assigned work duties constituted a compensable employment factor. The hearing representative determined, however, that the medical evidence was insufficient to establish an emotional condition resulting from the accepted work factor. On November 30, 2010 appellant requested reconsideration of the December 2, 2009 decision.

The Board does not have jurisdiction over the December 2, 2009 merit decision. The issue presented on appeal 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 November 30, 2010 request 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

³ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁸ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

legal argument. She submitted a factual statement describing her work duties, the change in her performance standards and the additional duties that she received as part of a PIP. Appellant also maintained that she experienced a hostile work environment. Her statement, however, repeats evidence previously presented to OWCP and, further, does not address the relevant issue of whether the medical evidence establishes that she sustained an emotional condition arising from the performance of her employment duties.¹⁰ That is a medical issue which must be addressed by relevant medical evidence.¹¹ A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant evidence in this case. Appellant maintained that she attached additional evidence to her reconsideration request; however, OWCP did not receive any additional information.

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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant again described the change in her work assignments that she maintained caused her emotional condition; however, OWCP accepted performing her assigned duties as a compensable employment factor. She further maintained that OWCP did not consider her November 30, 2010 letter or medical evidence from Dr. Bruce Banford, a clinical psychologist, and Dr. James Vick, Board-certified in family practice, sent by her attorney prior to the hearing representative's decision. The hearing representative, however, considered the reports from Dr. Banford and Dr. Vick and found that they did not establish that appellant sustained an emotional condition arising from her work duties. OWCP also properly considered her November 30, 2010 request for reconsideration and found that it did not warrant reopening the case for further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to reopen her case for further review of the merits under 5 U.S.C. § 8128.

¹⁰ 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. See *Richard Yadron*, 57 ECAB 207 (2005). Additionally, evidence that does not address the particular issue involved does not warrant reopening a case for merit review. See *Freddie Mosley*, 54 ECAB 255 (2002).

¹¹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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