



## **FACTUAL HISTORY**

On May 28, 2010 appellant, then a 44-year-old distribution clerk, filed an occupational disease claim alleging that her anxiety and major depression were caused by harassment and discrimination due to her physical disability.<sup>2</sup> She first became aware of her condition on September 21, 2006, but did not realize that it was employment related until April 16, 2010. Appellant attributed discrimination to the reduction of her work to four hours a day, changing her starting time, changing her day off from fixed to rotation and paying overtime to other employees for work within her restrictions that she could perform.

Appellant noted that she had previously sustained an employment injury which resulted in work restrictions. She alleged harassment by her, supervisor and the postmaster and filed an Equal Employment Opportunity (EEO) complaint. Appellant alleged that following surgery for an accepted employment injury, which required work restrictions, her work schedule was changed to 6:00 a.m. to 3:00 p.m. with an hour for lunch and from 2:00 a.m. to 10:30 a.m. with a half-hour for lunch. On April 7, 2010 the employing establishment offered her a modified job based on new restrictions working four hours a day from 10:00 a.m. to 2:00 p.m. with Tuesdays and Sundays as her off days. Appellant did not object to the reduction in her hours as OWCP paid her wage-loss compensation for the time lost. She alleged favoritism on the part of the employing establishment in providing both overtime and eight hours of work to two other clerks with work restrictions.

The record contains disability notes for the period May 11 to June 15, 2010 from Dr. Junaid Mohammed Ghadai, a treating Board-certified psychiatrist. On May 12, 2010 appellant was hospitalized for a therapeutic treatment program averaging a two-week stay.

By letter dated June 21, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised to submit additional medical and factual evidence to support her claim and given 30 days to submit the requested information.

In an August 2, 2010 report, Dr. Ghadai diagnosed general anxiety disorder, recurrent moderate major depression, chronic pain and obesity. Appellant attributed her condition to verbal abuse and problems with her supervisor. She also alleged that she was being singled out by her supervisor and was stressed by work. Dr. Ghadai opined that the aggravation of appellant's psychiatric conditions may be due to her work. He noted that she has been unable to work since May 11, 2010 and that she filed for disability retirement. Appellant also submitted statements from several coworkers.

By decision dated December 10, 2010, OWCP denied appellant's claim on the ground that she failed to establish any compensable factor of employment.

Appellant filed requests for reconsideration on January 8 and 10, 2011. In support of her claim, she submitted the August 2, 2010 report from Dr. Ghadai, a September 9, 2010 letter from the Office of Personnel Management (OPM) concerning her disability retirement, a November 24, 2010 commendation for her years of service on her retirement and a December 3,

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<sup>2</sup> On November 24, 2010 appellant retired on disability from the employing establishment.

2010 EEO decision. The EEO Commission found that her claims for disability discrimination should be held in abeyance due to its being subsumed into the *McConnell et al.* class action suit.

On August 2, 2010 Dr. Ghadai diagnosed sleep problems, anxiety and depression which had been exacerbated by her work. Appellant related being singled out and verbally abused by her supervisor. Dr. Ghadai noted that she stopped work on May 11, 2010 when she was hospitalized for her feelings of helplessness, hopelessness, depression, worthlessness and deemed suicidal.

By decision dated April 5, 2011, OWCP denied reconsideration without further merit review.

### **LEGAL PRECEDENT**

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

### **ANALYSIS**

Appellant claimed that her depression and anxiety were caused by harassment and discrimination by the employing establishment due to her physical disability. OWCP denied her claim on the grounds that she failed to establish a compensable factor of harassment or discrimination. The issue is whether appellant's advanced relevant legal argument not previously considered by OWCP, submitted relevant pertinent new evidence or showed that OWCP erroneously applied or interpreted a point of law.

Appellant argued that OWCP erred in finding that the evidence she submitted was insufficient to support her claim that her depression and anxiety were employment related. She submitted an August 10, 2010 report from Dr. Ghadai, letters from the employing establishment and OPM regarding her retirement and a December 3, 2010 EEO Commission decision.

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<sup>3</sup> 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 anytime on her own motion or on application.

<sup>4</sup> 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>5</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>6</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

The Board finds that OWCP properly denied appellant's request for a review of the merits of its August 13, 2009 decision under section 8128(a) of FECA. The evidence and argument appellant submitted do not establish that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute relevant and pertinent new evidence not previously considered by OWCP.

The evidence from the EEO stated that appellant's disability harassment claim was being held in abeyance due to its being subsumed into the *McConnell et al.* class action suit. The letters from OPM and the employing establishment addressed appellant's disability retirement. The evidence submitted by appellant does not address the incidents she alleged caused or contributed to her medical condition. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.<sup>7</sup> As they do not address appellant's allegations, they are insufficient to support her claim.

Although the August 10, 2010 report from Dr. Ghadai is new, the underlying issue in the case is not medical in nature. While Dr. Ghadai opined that appellant's depression, sleep problems, anxiety and depression had been exacerbated by her work, he provided no specifics as to what incidents at work were involved beyond noting that she attributed her condition to verbal harassment and being singled out by her supervisor. As appellant has failed to establish a compensable employment factor, the medical reports are not relevant.<sup>8</sup> 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 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 pursuant to 5 U.S.C. § 8128(a).

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<sup>7</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *R.M.*, 59 ECAB 690 (2008); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> *See C.T.*, Docket No. 08-2160 (issued May 7, 2009); *James W. Scott*, 55 ECAB 606 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 5, 2011 is affirmed.

Issued: May 14, 2012  
Washington, DC

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

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

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