

FACTUAL HISTORY

On April 13, 2010 appellant, then a 49-year-old mail clerk, filed an occupational disease claim (Form CA-2) alleging that she developed depression and anxiety due to factors of her federal employment. She submitted a June 10, 2010 report by Dr. Faheem Moghal, a Board-certified psychiatrist, who treated her for depression and anxiety in the context of work-related stress since May 2009. Dr. Moghal stated that appellant's work environment was made hostile by conflict with her supervisor and coworkers, lack of supervision and inconsistent implementation of disciplinary standards, unrealistic expectations, demands to perform functions outside of her job description and vulgar and intimidating language used by her coworker.

By decision dated December 23, 2010, OWCP denied the claim, finding that appellant did not submit sufficient evidence to establish any compensable employment factors. It found that the evidence she submitted did not establish that she was subjected to harassment or a hostile work environment.

On January 21, 2011 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated April 26, 2011, OWCP's hearing representative affirmed the December 23, 2010 decision finding that appellant did not submit sufficient evidence to establish compensable factors of employment. He noted that the administrative factors of reassignment and the trainer to whom appellant was assigned are not considered to have arisen in and out of the performance of duty.

On July 2, 2011 appellant requested reconsideration and submitted a May 9, 2011 report by Dr. Moghal who reiterated his opinion of June 10, 2010.

By decision dated September 23, 2011, OWCP denied appellant's request for reconsideration of the merits finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.² OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

² *Id.* at § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

³ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by 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 or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

The Board finds that appellant did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP and did not advance a relevant legal argument not previously considered by OWCP.

In support of her July 2, 2011 reconsideration request, appellant submitted a May 9, 2011 report by Dr. Moghal. The Board finds that the submission of this report did not require reopening her case for merit review because she had submitted substantively the same report by Dr. Moghal dated June 10, 2010, which was previously reviewed by OWCP in a decision dated December 23, 2010. As the report repeats evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Therefore, appellant has not established a basis for reopening her case.⁹

Because appellant only submitted repetitive and duplicative evidence with her request for reconsideration, the Board finds that OWCP properly denied merit review.

On appeal, appellant argues the merits of her case. The Board noted above that it only has jurisdiction over OWCP's September 23, 2011 nonmerit decision which denied her request for reconsideration and therefore is precluded from conducting a merit review.

⁴ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ See *A.L.*, *supra* note 4. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ See *D.K.*, 59 ECAB 141 (2007).

CONCLUSION

The Board finds that appellant did not submit pertinent new and relevant evidence, did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP and also did not advance a relevant legal argument not previously considered by OWCP. Therefore, OWCP properly refused to reopen her claim for further consideration of the merits of her claim under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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