

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

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**C.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Providence, RI, Employer**

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**Docket No. 12-671  
Issued: October 4, 2012**

*Appearances:*  
*James F. Malatos, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 2, 2012 appellant, through her representative, filed a timely appeal from an August 18, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. As more than 180 days elapsed from the last merit decision of August 19, 2010 and the filing of this appeal on February 2, 2012, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On appeal appellant, through her representative, contends that the evidence proves that appellant suffered from a post-traumatic stress disorder that was related to her federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. The facts as set forth in the Board's prior decision are hereby incorporated by reference.<sup>2</sup>

By decision dated June 1, 2010, the Board found that OWCP abused its discretion in denying appellant's request for reconsideration. The Board found that OWCP's delay in denying appellant's reconsideration request jeopardized her right to review of the merits of her case before the Board. Accordingly, the Board remanded the case and instructed OWCP to issue a new merit decision in order to protect appellant's appeal rights.<sup>3</sup>

On August 19, 2010 OWCP issued a new merit decision and denied appellant's claim for an emotional condition. It determined that appellant had not established a compensable factor of employment.

On August 1, 2011 appellant, through her representative, requested reconsideration. In support of her request, appellant submitted a letter addressed to her and signed by "Maria." In a separate note, she identified Maria as Maria Lage, and noted that Maria continued to work at the employing establishment as a clerk. Maria noted that she remembered John Tierney scaring appellant and that appellant worried about his dysfunctional ways. She noted that John Tierney was no longer at her place of employment and she discussed the current atmosphere at work as well as personal details from her life. Maria also indicated that she did not think that "Dotti" was a good influence on appellant. Appellant also submitted a newspaper article about two workers being killed in a branch of the employing establishment located in a different state.

By decision dated August 18, 2011, OWCP denied appellant's request for reconsideration without addressing the merits of the case.

## **LEGAL PRECEDENT**

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

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<sup>2</sup> Docket No. 09-2103 (issued June 1, 2010). Appellant filed an occupational disease claim on December 18, 2006 alleging that she sustained post-traumatic stress disorder and major depressive disorder/generalized anxiety disorder as a result of her federal employment. She contended that she developed an emotional condition caused by several incidents which occurred at different postal facilities.

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

application for review within one year of the date of that decision.<sup>6</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>7</sup>

### ANALYSIS

OWCP denied appellant's claim for an emotional condition. The arguments raised on appeal address the merits of the case. However, the merits of that decision are not before the Board. The only issue on appeal is whether OWCP properly denied appellant's request for reconsideration.

In requesting reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law nor did she advance a relevant legal argument not previously considered by OWCP. She did submit new evidence, but the Board finds that this evidence is not relevant or pertinent evidence. Appellant submitted a newspaper clipping with regard to two workers for the employing establishment that were killed in another state. This is not relevant to her claim as it does not discuss the circumstances of her case. As the Board has held, newspaper clippings are of no evidentiary value in establishing a claim as they are of general application and are not probative as to whether specific conditions were the result of particular circumstances of employment.<sup>8</sup> Furthermore, the statement by "Maria" is of a general nature and does not address specific circumstances of appellant's employment or provide details as to incidents that appellant alleged caused her emotional condition. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup>

Because appellant has failed to satisfy the requirements of 20 C.F.R. § 10.606(b)(2), she is not entitled to a merit review. Accordingly, the Board finds that OWCP properly denied appellant's request for reconsideration.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

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<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Eugene Van Dyk*, 53 ECAB 706 (2002); *Alan L. Buchholz*, 33 ECAB 271 (1981).

<sup>9</sup> *Robert P. Mitchell*, 52 ECAB 116 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 18, 2011 is affirmed.

Issued: October 4, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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