



## ISSUE

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

## FACTUAL HISTORY

On June 22, 2010 appellant, then a 52-year-old plant manager, filed an occupational disease claim alleging that on October 31, 2009 she first became aware of her psychological stress with physical ailments. She alleged that on June 1, 2010 she first realized that her conditions were caused by her personal relationship with Jerry D. Lane, vice president of area operations. Appellant's employment and career advancement were impacted after she attempted to end the relationship.

In an October 6, 2010 letter, appellant described the development of her professional and social relationship with Mr. Lane. She described his reaction to her termination of their social relationship, which included verbal and physical abuse and threats on June 1, 2010. Appellant filed an assault charge against Mr. Lane who was found guilty.

A June 21, 2010 unsigned medical report from Dr. Holly C. Harris, a Board-certified family practitioner, advised that appellant was unable to work due to a medical condition. Dr. Holly could return to work after being cleared by a medical doctor.

In a June 25, 2010 letter, the employing establishment contended that the evidence submitted by appellant was insufficient to support her allegations regarding the June 1, 2010 incident.

By letter dated October 18, 2010, OWCP addressed the factual evidence that the employing establishment and appellant needed to submit regarding the claim.

In a November 5, 2010 letter, Michael S. Furey, a district manager, stated that appellant reported directly to Edward McAteer, a senior plant manager, who reported directly to Mr. Lane. He related that appellant was not required to have daily contact with Mr. Lane. Mr. Furey noted that on June 3, 2010 appellant had been separated from the employing establishment.

Appellant submitted a June 2, 2010 misdemeanor arrest warrant for assault that was issued to Mr. Lane regarding the June 1, 2010 threatening incident.

In a December 9, 2010 decision, OWCP denied appellant's claim for an emotional condition, finding that she did not establish a compensable employment factors.

By letter dated June 27, 2011, appellant requested reconsideration. She contended that her relationship with a senior management official became a condition of her employment and career advancement after she attempted to end the relationship. Appellant stated that an October 12, 2010 Equal Employment Opportunity (EEO) Commission settlement agreement between herself and the employing establishment accompanied her reconsideration request.

In an August 25, 2011 letter, Phyllis J. Parks, a human resource management analyst, contended that appellant had not established any employment factors showing that her injury occurred in the performance of duty. She further contended that there was no medical evidence to establish a causal relationship between the claimed injury and medical condition.

In a September 9, 2011 decision, OWCP denied appellant's request for reconsideration, finding that she neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant merit review of its prior decision.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 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 of the merits.

### **ANALYSIS**

Appellant disagreed with OWCP's December 9, 2010 decision which denied her claim for an emotional condition on the grounds that she did not establish any compensable employment factors. Thus, the issue presented on appeal is whether appellant's June 27, 2011 request for reconsideration met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits.

On reconsideration, appellant contended that the relationship she had with a senior management official became a condition of her employment and career advancement after she attempted to end the relationship. The Board notes that this allegation is a restatement of her previous assertion regarding the cause of her emotional condition. This contention does not show that OWCP erroneously applied or interpreted a specific point of law and it does not advance a relevant legal argument not previously considered by OWCP. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. 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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *See A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005).

The Board notes that appellant also did not submit relevant and pertinent new evidence with her request for reconsideration. Appellant stated that a copy of an October 12, 2010 EEO Commission settlement agreement was attached to her reconsideration request. The Board, however, notes that the settlement agreement did not accompany the reconsideration request.

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her June 27, 2011 request for reconsideration.<sup>7</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2012  
Washington, DC

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

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

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

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<sup>7</sup> *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).