



## **FACTUAL HISTORY**

On October 25, 2010 appellant, then a 54-year-old part-time flexible (PTF) clerk, filed a claim (Form CA-2) for an employment-related anxiety disorder which arose on or about September 27, 2010. She alleged a hostile environment which aggravated her anxiety disorder. The employing establishment allegedly refused appellant's request for an accommodation. Appellant also alleged that her work schedule had been changed without cause and her hours reduced. The lost hours were reportedly reassigned to other employees. Appellant did not submit any medical evidence with her October 25, 2010 claim form.

On November 9, 2010 OWCP advised appellant that she needed to submit medical evidence in support of her claimed emotional condition. It also requested that she describe in further detail the particular work-related incidents or events that she believed either caused or contributed to her claimed condition. OWCP afforded appellant 30 days to submit the requested information.

OWCP subsequently received an undated report from an unidentified healthcare provider. The form report indicated that appellant had been treated for anxiety, heel spurs and shoulder pain. There was no date of injury or history of injury listed. OWCP also received May 30, 2008 treatment notes for left foot pain and exhaustion. It did not receive any additional information regarding specific employment factors believed to have caused appellant's claimed emotional condition.

By decision dated December 21, 2010, OWCP denied appellant's emotional condition claim.

On January 10, 2011 appellant requested reconsideration. She submitted a December 16, 2010 statement that included 62 alleged incidents she believed caused or contributed to her emotional condition. The incidents involved changes to appellant's work schedule, time and attendance matters, denial of overtime, alleged selective enforcement of workplace rules and preferential treatment for some PTFs. Appellant also alleged that she had been subjected to harassment, verbal abuse, intimidation, heightened scrutiny and retaliation. The alleged retaliation was for having reported safety hazards and other workplace concerns. Appellant accused her employer of tampering with the mail to make it appear as if she had not performed her duties. The employing establishment also refused to accommodate her various physical and psychiatric conditions. Appellant claimed that coworkers and managers had invaded her personal space and had been falsely accused by coworkers and union stewards. Appellant, a union steward, stated that management reportedly forced her to work on grievances when she was off-duty. She also alleged that the employing establishment failed to promote PTF clerks to available full-time regular positions, which reportedly violated a previous settlement agreement. Appellant's December 16, 2010 statement included a list of 15 grievances she had filed.

Appellant submitted statements from several coworkers attesting to perceived favoritism and fraternization between management and certain employees. These included a statement from Cindy Sanford who responded to several questions about certain supervisors and managers. Appellant also submitted various medical records, including a lower extremity imaging study.

In a June 17, 2011 merit decision, OWCP denied modification of its December 21, 2010 decision. It found that appellant failed to provide probative evidence in support of her allegations of harassment, intimidation, retaliation and heightened scrutiny. OWCP also found that many of appellant's allegations pertained to administrative actions which were not covered under FECA absent evidence of error or abuse on the part of the employer. It determined that no compensable employment factors had been established.

On November 18, 2011 appellant requested reconsideration. She reiterated her earlier allegations of harassment, favoritism and a hostile work environment. OWCP subsequently received a December 9, 2011 chronology of the previously implicated employment incidents that allegedly caused or aggravated her emotional condition.<sup>2</sup>

Appellant submitted additional evidence which included a July 7, 2009 settlement agreement between management and appellant in her capacity as union representative. Pursuant to the settlement, management agreed that it was unacceptable and in violation of the law to delay mail. Appellant also submitted a copy of a U.S. Code provision regarding delay or destruction of the mail or newspapers, as well as a November 2, 2001 signed acknowledgment of her responsibilities regarding security of U.S. mail.

OWCP also received a June 10, 2009 blog posting regarding an employee who committed suicide at a postal facility. Appellant submitted a September 8, 2010 statement from April Balsten, who noted that she did not know of current incidents or witness them. There was also an undated statement from Ms. Sanford regarding discovery of misplaced mail on September 23 and October 7, 2010. Appellant provided the minutes from a December 31, 2009 labor/management meeting and the agenda for a September 29, 2010 labor/management meeting. She also submitted additional medical evidence.

By decision dated February 17, 2012, OWCP denied appellant's November 18, 2011 request for reconsideration.

### **LEGAL PRECEDENT**

OWCP has the discretion to reopen a case for review on the merits.<sup>3</sup> An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> When an application for reconsideration does not meet at least one of the above-noted

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<sup>2</sup> The December 9, 2011 statement was similar to appellant's December 16, 2010 statement except that the recent statement presented the alleged employment incidents in chronological order from September 8 through December 6, 2010.

<sup>3</sup> 5 U.S.C. § 8128(a).

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

requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>5</sup>

### ANALYSIS

Appellant's November 18, 2011 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. She submitted the appeal request form that accompanied OWCP's June 17, 2011 merit decision. Without elaboration, appellant placed a check on the appropriate line indicating that she was seeking reconsideration. She submitted a November 18, 2011 statement and a December 9, 2011 chronology of events. Appellant reiterated numerous allegations previously set forth in her December 16, 2010 statement. She did not advance a relevant legal argument not previously considered by OWCP. Therefore, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under section 10.606(b)(2).<sup>6</sup>

The Board finds that appellant also failed to submit any relevant and pertinent new evidence with her November 18, 2011 request for reconsideration. The recent medical evidence she submitted is irrelevant as the underlying issue on reconsideration was whether she established any compensable employment factors. While a traumatic event, the June 2009 workplace suicide at another postal facility is not relevant to the current claim. The statement of Ms. Balsten, while new, is not relevant as she did not witness any incidents. The statement of Ms. Sanford was essentially duplicative of prior statements of record. Because appellant did not provide any new evidence that might arguably impact the prior decision, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).<sup>7</sup>

### CONCLUSION

The Board finds that OWCP properly denied appellant's November 18, 2011 request for reconsideration.

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<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Id.* at § 10.606(b)(2)(i) and (ii).

<sup>7</sup> *Id.* at § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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