

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

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**B.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Petersburg, FL, Employer**

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**Docket No. 12-961  
Issued: September 24, 2012**

*Appearances:*  
*Lenin Perez*, 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 March 26, 2012 appellant filed a timely appeal of a December 15, 2011 decision of the Office of Workers' Compensation Programs (OWCP), denying her application for reconsideration without merit review of the claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the December 15, 2011 decision. Since more than 180 days has elapsed between the last merit decision on April 12, 2011 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. § 501.3(e).

**ISSUE**

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant review of the merits of the claim for compensation pursuant to section 8128(a).

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

## **FACTUAL HISTORY**

On February 24, 2011 appellant, then a 37-year-old letter carrier filed an occupational disease claim (Form CA-2) alleging that she suffered emotional stress, with physical complications, due to harassment and a hostile work environment. On the claim form, she stated that her supervisor had targeted her for harassment. Appellant submitted a February 8, 2011 report from Dr. Gerard Boutin, a psychologist.

By letter dated February 25, 2011, OWCP requested additional factual and medical evidence. By decision dated April 12, 2011, it denied the claim for compensation, noting that appellant had not submitted additional evidence.

By letter dated December 5, 2011 appellant, through her representative, requested reconsideration. She submitted a statement from a coworker, who discussed appellant's relationship with the supervisor and stated that several times he saw the supervisor approach appellant in an aggressive manner and yell at her. Another coworker submitted a statement indicating that she worked next to appellant and heard conversations between appellant and the supervisor, noting that appellant was intimidated and upset. Appellant also submitted a witness statement from a customer, who stated that she had witnessed appellant being followed and observed by the supervisor while working.

In a decision dated December 15, 2011, OWCP determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim. It found that she had not submitted new and relevant evidence. According to OWCP, appellant had failed to provide a detailed description of the alleged harassment and therefore the submitted evidence was not relevant.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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 evidence not previously considered by OWCP."<sup>3</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

### ANALYSIS

In the present case, appellant submitted an application for reconsideration by letter dated December 5, 2011. The letter did not discuss a specific point of law or raise a legal argument. Appellant therefore did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP.

Appellant did, however, submit new evidence in the form of three witness statements. The claim for compensation filed was for an emotional condition causally related to alleged harassment and a hostile work environment created by a supervisor. The witness statements had not been submitted previously and therefore constitute evidence not previously considered. The Board notes that OWCP had not accepted as factual the allegation of harassment or hostile work environment. Evidence such as witness statements regarding a specific factual allegation, which has not been established as compensable, may be relevant to the underlying claim for an emotional condition.<sup>5</sup> In this case, appellant submitted witness statements regarding interaction between her and the supervisor that are relevant to the underlying factual issue.

OWCP appears to find that appellant did not submit a detailed description of the alleged harassment and, therefore, no witness statements would be relevant. No authority was provided for this finding. The issue is not whether appellant has met her burden of proof to establish the claim. Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations require only that appellant submit relevant and pertinent evidence not previously considered by OWCP. The evidence submitted is new, relevant and pertinent to the factual issues in the case. Appellant has met the requirement of 20 C.F.R. § 10.606(b)(2)(iii), and is entitled to a merit review of her claim. The case will be remanded for a decision on the merits of the claim.

### CONCLUSION

The Board finds appellant's application for reconsideration sufficient to warrant a merit review of the claim for compensation.

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<sup>5</sup> See *Dallas Marlatt*, Docket No. 00-609 (issued March 16, 2001) (new witness statements as to claimant's workload was relevant to the allegation of overwork).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 24, 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