

ISSUE

The issue is whether OWCP properly denied appellant's November 11, 2011 claim for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 6, 2010 appellant, then a 41-year-old human resource specialist, filed an emotional condition claim as a result of working in a hostile environment. She stopped work on July 7, 2010. Appellant indicated that she first became aware of her illness on January 10, 1995 and realized that it resulted from her employment on September 14, 2009. She stated that she suffered from psychiatric symptoms including but not limited to cognitive issues, anxiety, panic attacks, extreme paranoia, severe depression and physical symptoms as a result of her employment.

In an undated letter, appellant requested a reassignment to a position that removed her from the long-standing supervisory and management issues in her department. She stated that her condition worsened to the point where she became anxious and paranoid about coming to the office, performing work functions and being in the presence of certain coworkers.

In a September 14, 2009 request for accommodation, Daniel M. Woods, a licensed counselor, stated that appellant's emotional health had worsened due to administrative conflicts, specifically associated with her supervisor and recommended that she be transferred to another supervisor. He related that these challenges had extended over a period of time and affected her mental and emotional state.

In an October 2, 2009 note, Dr. James Vorosmarti, Board-certified in occupational medicine, reviewed appellant's medical information and stated that she had an impairment that limited one or more major life activities. He recommended that her request for reassignment be allowed.

In a January 21, 2010 work excuse slip, Dr. Jyoli Belil, a psychiatrist, indicated that he examined appellant that day and recommended that she remain off work for the next week.

In a January 22, 2010 report, Mr. Woods stated that appellant's symptoms had worsened and her ability to cognitively function was reduced. He recommended that she be reassigned to another division where she would no longer need to report to her current supervisory staff.

On July 16, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish her emotional condition claim and requested additional information. It specifically requested a detailed description of the employment-related conditions or incidents, which she believed contributed to her illness.

In an August 7, 2010 letter, appellant stated that she was enclosing accounts of unfair treatment, disability discrimination, disregard for the advice of health professionals and the mishandling of private medical information. She alleged that the information was given to several officials, including executive level management, but she continued to experience hostility and retaliation without relief. Appellant included a July 7, 2010 e-mail to the employing

establishment informing them that she would be using the Family Medical Leave Act leave until further notice because the continued hostility in her department was unbearable and unwarranted.

In an August 6, 2010 letter, Mr. Woods related his several requests that appellant be transferred to another office and supervisor due to the significant distress the workplace had on her. He noted that his requests were not honored, which resulted in continued distress of appellant, a February 2010 hospitalization and current inability to work in that environment.

In an undated letter, appellant stated that she wanted to address the lack of recognition, unfair treatment, abuses of authority and the hostility she suffered in her department. She described various projects she had accomplished at work and alleged that she did not receive any recognition for these accomplishments nor were her accomplishments reflected in her ratings or bonuses. Appellant further reported that her supervisor defamed her character by implying to coworkers and directly telling vendors that she did not yet grasp procedures and concepts and accused her of overstating her medical condition when she became sick in the spring of 2008. During her eight weeks of recovery, she stated that she was not allowed to telework even though other employees were allowed to telework. When appellant returned to work she was put on a performance plan where she would be supervised weekly and periodically reviewed by the Branch Chief. When she wrote a letter requesting that the employing establishment makes their concerns clear she did not receive a response. Appellant also alleged that after she became a career-conditional employee in April 2009 her supervisor's behavior became harassing and almost akin to stalking behaviors. In handwritten notes, she indicated that this letter was sent to upper level management but none of them responded nor intervened.

In a decision dated August 16, 2010, OWCP denied appellant's claim finding that the evidence was insufficient to establish that the alleged events occurred as described.

On August 24, 2010 appellant submitted a request for an oral hearing.

In a decision dated December 7, 2010, an OWCP hearing representative vacated and remanded the August 16, 2009 denial decision finding that appellant presented a detailed account of work factors that she believed to have caused her emotional condition but OWCP failed to address or discuss these alleged work factors. The case was remanded to the district OWCP for further development of the factual evidence and to make findings of fact regarding which of the alleged factors were considered compensable factors of employment.

By decision dated January 14, 2011, OWCP denied appellant's claim finding that the evidence did not establish that she sustained an injury within the performance of duty. It determined that the alleged factors either did not occur or were not considered compensable factors of employment.

On February 14, 2011 appellant submitted a request for an oral hearing, which was held on May 18, 2011. Darlene Carr was present for the employing establishment. Appellant disagreed with OWCP's denial decision alleging that they did not submit any type of factual information or proof, such as statements from her supervisor, to support that the alleged incidents did not occur. She stated that the employing establishment failed to respond to any development letters and did not provide any proof that the employment factors did not occur as she alleged.

Appellant noted that she had countless e-mails that proved she had issues in her department and was harassed and micromanaged by her supervisors and that they did not respond to any of her concerns. She related that she began working at the employing establishment on April 30, 2007 and began to experience stress from her employment in mid-2009 when she had to disqualify a contracting officer. Appellant noted that after this incident her supervisors began to question her judgment and put her on a performance plan. She stated that her performance continued to be reviewed by her supervisors until September 2009 when she requested reasonable accommodations after a supervisor had her request that she no longer work within the department. Appellant related that she suffers from preexisting bipolar disorder and that her treating physician informed her that her work environment was harmful to her health so she had to stop work.

Appellant submitted an April 27, 2010 letter of recommendation by James K. Friert, the deputy associate director, a January 20, 2010 Certificate of Appreciation, a March 8, 2010 letter of recommendation by Janet Smith, a manager, several e-mails between appellant and the employing establishment regarding her request for reassignment and various work assignments, telework assignment schedule for September 2009 and an affidavit by Lauren C. Schab regarding an Equal Employment Opportunity case filed by appellant. She also submitted a February 1, 2010 hospital record indicating that she was treated that day.

In a May 25, 2010 e-mail, the employing establishment advised appellant that they were not able to find appropriate reassignment positions for her, but she was approved for alternative accommodations within her current position.

In a May 6, 2011 therapy report, Mr. Woods related that appellant wished to continue regular therapy services to address the symptoms that resulted from her work. He also resubmitted his January 8 and 22, 2010 letters and September 14, 2009 and August 6, 2010 requests for accommodation.

In a June 22, 2011 letter to an OWCP hearing representative, the employing establishment alleged that appellant did not provide sufficient evidence to establish that she sustained a compensable injury during her employment. It stated that she did not submit any evidence or testimony to suggest that she sustained an injury while performing work duties but only expressed her dissatisfaction with her supervisor. The employing establishment reported that it made every effort to accommodate appellant's disabilities and assist her with her concerns.

By decision dated August 1, 2011, an OWCP hearing representative denied appellant's claim finding that the evidence did not establish that she experienced a compensable factor of employment.

In a letter dated November 11, 2011, appellant requested reconsideration. She alleged that a September 2, 2011 note by Dr. Raphael Mbachu, a Board-certified psychiatrist, advised her not to return to her office because workplace hostility caused her psychiatric and emotional distress and would further jeopardize her mental well-being. No additional evidence was received.

By decision dated December 29, 2011, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁴ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district OWCP.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.⁷ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by OWCP; and she has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated August 1, 2011, OWCP denied appellant's claim finding that the evidence did not establish that she experienced a compensable factor of employment. In a narrative statement dated November 11, 2011, appellant requested reconsideration. No

⁴ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ 20 C.F.R. § 10.607(a).

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

additional evidence was received. The Board notes that submission of this statement did not require reopening appellant's case for merit review. OWCP denied her claim finding that the alleged employment factors did not occur or were not considered compensable factors of employment. Appellant's statement that a psychiatrist recommended that she not return to work is not relevant and pertinent to the underlying issue in this case and is not sufficient to require OWCP to reopen her claim for consideration of the merits.¹⁰

On appeal, appellant alleges that Dr. Mbachu's September 2, 2011 letter recommending that she not return to work was relevant and pertinent because it corroborated her allegations that workplace hostility and stress caused her mental and emotional condition. This letter, however, was not submitted with her November 11, 2011 narrative statement and her statement alone was insufficient to warrant merit review.

Appellant did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law or advances a relevant legal argument not previously considered by OWCP. Because she did not meet any of the necessary requirements, she is not entitled to further merit review.

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

CONCLUSION

The Board finds that OWCP properly denied appellant's November 11, 2011 request for reconsideration under 5 U.S.C. § 8128(a).

¹⁰ See *James W. Scott*, 55 ECAB 606 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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