

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

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**K.E., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Port Jefferson Station, NY, Employer**

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**Docket No. 13-1338  
Issued: November 1, 2013**

*Appearances:*  
*Thomas S. Harkins, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 20, 2013 appellant filed a timely appeal of a November 28, 2012 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 November 28, 2012 nonmerit decision. Since more than 180 days has elapsed between the last merit decision on November 25, 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 5 U.S.C. § 8128(a).

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

## **FACTUAL HISTORY**

The case was before the Board on a prior appeal. In a decision dated November 25, 2011, the Board affirmed an October 4, 2010 OWCP decision denying appellant's claim for compensation.<sup>2</sup> The Board found that appellant had not established a compensable work factor with respect to her claim for an employment-related emotional condition. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

By letter dated November 6, 2012, appellant, through her representative, requested reconsideration. She reviewed the history of the case and general case law with respect to burden of proof, evidence and emotional condition claims. According to appellant, the evidence established that actions of the employing establishment were unreasonable, as she was required to work outside the terms of the modified work assignment. With respect to specific evidence, she referred to a September 10, 2010 statement from Cheryl Feld-Byers, supervisor, and a September 11, 2010 statement from Barbara A. Guerin, supervisor. Appellant concluded that the factual and medical evidence established a compensable emotional condition.

In a decision dated November 28, 2012, OWCP denied the application for reconsideration without reviewing the merits of the claim.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</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>4</sup> 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>5</sup>

## **ANALYSIS**

The November 6, 2012 application for reconsideration does not show that OWCP erroneously applied or interpreted a specific point of law. The application note reviews Board case law with respect to emotional condition cases, but does not show that a specific point of law was erroneously applied or interpreted. The argument set forth in the application is that

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<sup>2</sup> Docket No. 11-861 (issued November 25, 2011), *petition for recon. denied* (issued August 29, 2012).

<sup>3</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>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994). In the present case the "merits" of the claim would be the termination of compensation effective October 13, 2011.

appellant met her burden of proof to establish her claim based on the evidence of record, but it does not advance “a relevant legal argument not previously considered by OWCP.” Appellant had raised the argument that she was forced to work outside her work restrictions before OWCP, however, the Board considered the issue in its November 25, 2011 decision. The evidence noted by appellant in the application for reconsideration, namely the September 10 and 11, 2010 statements from appellant’s supervisors, was also fully considered by the Board. In addition, the Board noted and addressed appellant’s argument as to the probative value of an employee’s statement.

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument. With respect to the third standard under 20 C.F.R. § 10.606(b)(2), the submission of “relevant and pertinent evidence not previously considered by OWCP,” appellant did not submit any additional relevant evidence. Appellant did not meet any of the standards found in 20 C.F.R. § 10.606(b)(2) to require OWCP to reopen the case for merit review of the claim for compensation. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for merit review.

On appeal, appellant reiterates her arguments that she has established the claim for compensation. The issue on appeal was whether appellant had met one of the requirements under 20 C.F.R. § 10.606(b)(2) for establishing entitlement to a merit review of her claim. For the reasons noted above, the Board finds OWCP properly denied merit review in this case.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant’s application for reconsideration was insufficient to warrant review of the merits of the claim for compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 28, 2012 is affirmed.

Issued: November 1, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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