

FACTUAL HISTORY

On January 24, 2011 appellant, then a 50-year-old instrument mechanic, filed a Form CA-2 alleging that she sustained stress and anxiety while in the performance of duty. By decision dated March 9, 2011, OWCP denied her occupational disease claim on the basis that she failed to establish any compensable employment factors or incidents.

Appellant requested a review of the written record on March 28, 2011. She specified that her coworkers made vulgar, racist and sexist remarks since 2005 and compromised her safety by refusing to communicate with her and letting her work unaccompanied in the shop. Appellant also alleged that she came across a rope tied into a hangman's noose in or around September 2010 in the common designated area. On June 8, 2011 an OWCP hearing representative set aside the March 9, 2011 decision and remanded the case for further development. Appellant subsequently added that she was essentially interrogated by a "mob of men" regarding a calibration error during a meeting in 2004 or 2005, experienced stress after she reported a coworker for a similar error in 2005 and was singled out for job performance monitoring by her supervisor in April 2009.²

By decision dated February 24, 2012, OWCP denied appellant's claim, finding the evidence insufficient to establish any compensable factors of employment. It found that her allegations either implicated administrative and personnel matters and were not adequately supported by probative and reliable factual evidence.

Appellant requested reconsideration on February 8, 2013 and provided a chart dated February 7, 2013 reiterating her account of what transpired at work and summarizing various findings from medical appointments for the period March 28, 2011 to July 24, 2012.

By decision dated February 25, 2013, OWCP denied her request on the grounds that she did not submit new and pertinent evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.⁴ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

² Appellant also submitted various medical records.

³ 5 U.S.C. § 8128(a).

⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁵ *L.D.*, 59 ECAB 648 (2008). See *id.* at § 10.608(b).

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review.

By merit decision dated February 24, 2012, OWCP denied appellant's emotional condition claim on two bases. First, several of her allegations related to administrative and personnel matters rather than her own regular or specially-assigned work duties. In the absence of evidence disclosing error or abuse on the part of the employer, these "administrative functions" are not compensable factors of employment under FECA.⁶ Second, the evidence of record was deficient and did not substantiate the remaining allegations.⁷ Thereafter, appellant requested reconsideration on February 8, 2013 and submitted a February 7, 2013 chart. Although this document was not previously considered by OWCP, it did not address whether the employing establishment acted in an erroneous or abusive manner with respect to an administrative and personnel matter or corroborate her allegations. The submission of evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁸ In addition, appellant did not assert a relevant new legal contention or show that OWCP erroneously applied or interpreted a specific point of law. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

On appeal appellant raises an argument that addresses the merits of her case. The Board only has jurisdiction to consider whether OWCP properly denied her request for reconsideration based on the evidence and argument of record at the time the February 25, 2013 nonmerit decision was issued. As discussed above, appellant did not provide evidence or argument satisfying any of the three regulatory criteria for reopening a claim.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

⁶ *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

⁷ *G.S.*, Docket No. 09-764 (issued December 18, 2009).

⁸ *D.K.*, 59 ECAB 141 (2007). The Board also notes that the February 7, 2013 chart only reiterated appellant's account of what transpired in the workplace. The document was not signed or otherwise attested by a third party. See *Edward W. Malaniak*, 51 ECAB 279 (2000) (the submission of evidence that repeats or duplicates evidence already found in the record does not constitute a basis for reopening a case).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 23, 2013
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board