

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

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C.D., Appellant )

and )

U.S. POSTAL SERVICE, MONROVIA POST )  
OFFICE, Monrovia, CA, Employer )

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**Docket No. 13-2101  
Issued: April 8, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 13, 2013<sup>1</sup> appellant filed a timely appeal of a March 20, 2013 Office of Workers' Compensation Programs' decision denying merit review. Because over 180 days has elapsed between the most recent merit decision, dated March 7, 2012, and the filing of this appeal, on September 13, 2013. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 and the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from March 20, 2013, the date of OWCP's decision, was September 16, 2013. Since using September 18, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is September 13, 2013, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

## **FACTUAL HISTORY**

On December 22, 2006 appellant, then a 55-year-old business reply clerk, filed an occupational disease claim alleging that she developed major depression and post-traumatic stress disorder due to her hostile work environment. She first became aware of her condition on July 27, 2006 and first attributed her condition to her employment on that date. Appellant submitted narrative statements, including a November 29, 2006 statement, attributing her emotional condition and stress-related physical conditions to discrimination, harassment and inappropriate discipline at the employing establishment from September 2005 through May 1, 2006 when she stopped work. She alleged that Tony Hernandez, supervisor, yelled beginning in July 2005. Appellant sent whistleblowing letters and was targeted with discrimination acts. She received eight official discussions, five fact findings, two letters of warning, one suspension and four threats of removal. Appellant alleged that she was treated differently from her coworkers, that coworkers were alienated from her and that a hostile work environment existed at the employing establishment. She attributed her emotional condition to advanced sick leave requests in June 2006. Appellant also attributed her emotional condition to additional job duties after September 12, 2005 and overwork. She noted that her previous claim for an emotional condition was accepted by OWCP on December 6, 1999 for adjustment disorder resolved.

On October 22, 2006 Dr. Susan Rice, a clinical psychologist, diagnosed anxiety with depression and inability to work. She opined that appellant's current injury was work related. Dr. Donald A. Cadogan, a clinical psychologist, completed a report on February 7, 2007 in which he diagnosed major depressive disorder and post-traumatic stress disorder associated with appellant's work beginning on May 24, 2006.

By decision dated November 5, 2007, OWCP denied appellant's claim finding that she had not substantiated a compensable factor of employment. It noted that she had received disciplinary actions but that she had not established error or abuse in these actions. OWCP noted that the witness statements submitted by appellant were not sufficient to establish any of her alleged employment factors.

Appellant requested reconsideration on April 2, 2008. She alleged additional incidents of harassment and discrimination. In her factual statement, appellant attributed her emotional condition to Mr. Hernandez's statements asserting that she was responsible for a carrier's firing.

Appellant submitted additional statements from Ramona Perez, James P. Clancy, a carrier, and Richard Rodriguez, a carrier, that appellant's work area was cordoned off with a rope to quarantine her from the rest of the work force. Mr. Clancy stated that the rope was limited to her time at the workstation and that she was singled out for harassment.

OWCP denied modification of its prior decision on July 10, 2008. It noted that appellant's supervisor disputed appellant's allegations and found that she had not substantiated a compensable factor of employment.

In September 2008, appellant completed a response to OWCP's July 10, 2008 decision. She submitted additional general witness statements and further factual statements. Susan Young, a supervisor, stated that she had a discussion with appellant about telephone usage and

on March 28, 2006 she and appellant agreed on appellant's break time. Appellant submitted an April 20, 2006 letter of warning for failure to follow instructions regarding a change in break schedules. On June 13, 2006 a letter of warning was removed. The employing establishment proposed to remove appellant by letter dated January 25, 2008.

Appellant requested reconsideration on March 13, 2009. She submitted additional factual statements and general witness statements as well as grievances and responses from her supervisors. OWCP issued a decision on September 4, 2009 denying modification of its prior decisions.

Appellant requested reconsideration on April 13 and June 4, 2010. By decision dated August 12, 2010, OWCP denied modification of its prior decisions finding that she had not substantiated a compensable factor of employment to which she attributed her emotional condition.

On September 2, 2010 appellant requested reconsideration. She completed a statement on August 22, 2010 and alleged that she was given additional tasks resulting in overwork, that she was criticized about her work, that she experienced harassment regarding telephone usage and overtime and that she was treated differently from other employees. Appellant also alleged that she was working in a hazardous environment with yelling, intimidation, fear and bullying as a regular part of her day.

OWCP issued a decision on December 6, 2010 denying modification of appellant's emotional condition claim. It found that she had not submitted the necessary corroborating evidence to substantiate her allegations of harassment, retaliation, discrimination, disparate treatment, error and abuse in an administrative action or other compensable factors of employment alleged.

In support of a December 5, 2011 request for reconsideration, appellant resubmitted statements regarding her workload and alleged that she was not given sufficient time to attend to immediate problems which resulted in long-term issues. She also alleged discrimination on April 24, 2006 as she was treated differently when she used overtime, when she requested overtime, when she used the telephone and in the assignment of a mandatory break time. On December 3, 2007 Ms. Perez stated that Ms. Young treated appellant differently by denying her requests for overtime in a rude way. Appellant also noted that management placed a rope around her workstation to prevent coworkers from talking with her.

OWCP denied modification of appellant's claim in a March 7, 2012 decision. It found that she had not established a compensable factor of employment which would cause or contribute to her diagnosed emotional condition.

Appellant requested reconsideration on March 6, 2013. She submitted a statement dated October 18, 2006 from Rosa E. Holguin, a supervisor, noting that appellant had not reported for duty since April 28, 2006 and had provided documentation of anxiety and stress rendering her totally disabled. Ms. Holguin stated that when working appellant would at times demonstrate a friendly personable attitude and then without warning become unfriendly and paranoid. She requested a fitness for duty.

In a report dated March 7, 2013, Donald A. Cadogan, a licensed clinical psychologist, opined that appellant had previous psychological injuries which increased the likeliness of a pathological reaction to frequent yelling at the workplace. He stated that she would have experienced a traumatic stress reaction to her work without her prior history, but that her history increased the possibility of this reaction and its severity.

By decision dated March 20, 2013, OWCP declined to reopen appellant's claim for consideration of the merits finding that the evidence submitted including evidence from Dr. Cadogan and the statement dated October 18, 2006 from Ms. Holguin, were not relevant to the current issue.

### **LEGAL PRECEDENT**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>2</sup> Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup> Section 10.608(b) of OWCP's regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>4</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.

### **ANALYSIS**

Appellant requested reconsideration on March 6, 2013. In support of this request, she attempted to comply with sections 10.606 and 10.608 of OWCP's regulations by submitting relevant and pertinent new evidence not previously considered by OWCP. Appellant submitted Ms. Holguin's statement regarding appellant's character as well as additional medical evidence from Dr. Cadogan.

The Board finds that the evidence submitted by appellant was not relevant to her claim as it stood before OWCP. As OWCP had previously denied her claim on the grounds that she had not substantiated a compensable factor of employment, additional medical evidence was not relevant to the aspect of her claim before OWCP. Where a claimant has not established any

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606.

<sup>4</sup> *Id.* at § 10.608.

compensable employment factors, medical evidence is not yet relevant and need not be considered.<sup>5</sup>

The Board further finds that Ms. Holguin's statement does not implicate an alleged employment factor including harassment, discrimination or disparate treatment. This statement dated October 18, 2006 is not relevant to appellant's alleged emotional condition as she stopped work on May 1, 2006 as she was totally disabled due to her condition.

**CONCLUSION**

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on March 20, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2013 decision of Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> A.K., 58 ECAB 119 (2006).