

FACTUAL HISTORY

On August 9, 2010 appellant, then a 49-year-old senior claims examiner, filed a traumatic injury claim alleging that on July 19, 2010 she became agitated due to a work situation and was unable to control her mood swings.

Appellant submitted a two page statement dated September 15, 2010 addressing factors of her employment she believed caused her to sustain an emotional condition. She explained that, at the end of February 2009, her supervisor assigned her to be the senior claims examiner working with Lillian Gaddy, a claims examiner. Appellant related that her supervisor was aware of the fact that she and Ms. Gaddy did not speak and, shortly thereafter, Ms. Gaddy filed an Equal Employment Opportunity (EEO) complaint. The complaint was investigated and appellant was contacted and spoke with an EEO investigator, who asked if it was possible that she try to resolve any issue with Ms. Gaddy. Appellant wrote an e-mail to Ms. Gaddy but was thereafter called into the district director's office and told that appellant should not have sent the e-mail due to its tone. On or about June 15, 2009 appellant was reassigned to a new supervisor. She requested an explanation as to why she was transferred and was told that it was to assist the unit in cleaning up the pending caseload. After the transfer, however, appellant received a performance evaluation as an effective employee, rather than exemplary. She provided rebuttal statements to her performance evaluation and alleged that she was singled out in unit meetings, removed as a senior claims examiner and reassigned as a journeyman claims examiner.

On October 22, 2010 Martina Lotuaco, appellant's present supervisor, responded to appellant's allegations. She noted that appellant worked in another unit (Unit A) until June 2009 when reassigned due to a routine reorganization of staff. Appellant was assigned as a supervisory claims examiner to mentor and coach several claims examiners in the unit. Ms. Lotuaco stated, however, that through 2009 she found errors when sampling the cases assigned to appellant. She held private meetings to address the errors with appellant, who often implicated the errors to subordinate claims examiners. Ms. Lotuaco addressed specific examples of poor work quality, unfamiliarity with the procedure manual, coding errors, oversights in reviews work of claims examiners and appellant's erratic and sometimes demeaning attitude. The pattern of poor work quality extended through July 2010. In one instance when discussing her work, appellant disagreed with Ms. Lotuaco and accused a coworker of forging her name on a final recommended decision. Ms. Lotuaco called the coworker into the office and he denied and disputed appellant's various allegations. Appellant subsequently apologized. Ms. Lotuaco characterized appellant's demeanor as rude and unprofessional. Appellant stopped work on July 19, 2010 and subsequently requested leave from another supervisor. She was out on extended leave until October 12, 2010, when she resumed full-time duty without restriction and was reassigned to a different unit.

By decision dated December 2, 2010, OWCP denied appellant's claim. It found that she failed to establish a compensable factor of employment. Although assigned to work with Ms. Gaddy, appellant was not involved in the EEO complaint and did not submit evidence to establish any allegation of error. She was assigned to a different supervisor, but did not submit evidence to establish administrative error or abuse by Ms. Lotuaco; nor was there evidence of error in appellant's reassignment from senior claims examiner to journeyman claims examiner.

On November 29, 2011 appellant requested reconsideration. She submitted two letters from persons praising her work performance. Sharon R. Pushard, a friend, stated that she met appellant in December 2005 and had worked with her for a year and a half before she transferred to another unit. Appellant discussed issues with a certain claims examiner and then, after she was transferred, with her new supervisor, who stated that appellant was upset about the work situation. She also submitted unsigned quality review and file review pages, organizational chart mark-ups on cases and a copy of a log on her cases. Appellant submitted a copy of an October 5, 2010 settlement agreement in which she withdrew her complaint of discrimination in agreement for reassignment to another supervisor effective October 12, 2010 and that her performance plan for the period December 7, 2009 through September 30, 2010 would be reviewed by Ms. Lotuaco as the initial reviewer and the District Director as the higher level reviewer. The settlement agreed that it would not be construed as an admission of any wrong doing or violation of law.

Appellant submitted a rebuttal to Ms. Lotuaco. She discussed alleged inaccuracies in Ms. Lotuaco's letter, listed instances where she contended that Ms. Lotuaco was not truthful and alleged that Ms. Lotuaco bullied her employees. Appellant challenged the assertion that her emotional condition was due to outside stressors. She concluded that a bad decision was made when she was assigned to work with a claims examiner with whom she did not get along. Appellant also submitted a statement further addressing her allegations.

By decision dated May 4, 2012, OWCP denied appellant's claim for reconsideration. It found that her request was not timely filed within one year and failed to establish clear evidence of error.

Appellant appealed to the Board.² In a December 12, 2012 decision, the Board found that her reconsideration request was timely filed within one year of the December 2, 2010 OWCP decision. The Board set aside the May 4, 2012 decision and remanded the case for OWCP to review appellant's request for reconsideration under proper standard of review.

On March 8, 2013 OWCP denied appellant's request for reconsideration. It found that the evidence submitted was not sufficient to warrant further review of the decision of December 2, 2010.

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: (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 To be entitled to a merit review

² Docket No. 12-1359 (issued December 12, 2012).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3).

of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

Appellant disagreed with the denial of her claim for an emotional condition and timely requested reconsideration. The underlying issue on reconsideration was whether she established a compensable factor of employment.

The Board finds that appellant submitted new evidence relevant to the denial of her claim of an emotional condition. The evidence pertains to whether appellant established a compensable factor of employment.⁷ She addressed the statement submitted by Ms. Lotuaco regarding appellant's work performance and her interactions at work with a subordinate claims examiner. OWCP's initial denial of appellant's claim determined that there was no evidence that established that the incidents occurred, as alleged. On reconsideration, appellant submitted evidence concerning specific dates and encounters with the claims examiner to which she was assigned. She also submitted copies of e-mails. This evidence is relevant to appellant's claim of an emotional condition.

Reopening a claim for merit review does not require a claimant to submit all evidence, which may be necessary to discharge his or her burden of proof.⁸ If OWCP should determine that the new evidence submitted lacks probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁹ After such further development as is deemed necessary, it shall issue a merit decision.

CONCLUSION

The Board finds that OWCP improperly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *J.U.*, Docket No. 10-215 (issued July 19, 2010).

⁸ *L.K.*, Docket No. 13-949 (issued August 15, 2013).

⁹ *See Dennis J. Lasanen*, 41 ECAB 933 (1990).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: August 13, 2014
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