

FACTUAL HISTORY

On May 23, 2011 appellant, then a 33-year-old attorney, filed an occupational disease claim (Form CA-2) alleging that a supervisor caused stress due to inappropriate behavior and retaliation, including negative performance evaluations. In a July 25, 2011 statement, she alleged that she was subjected to sexual harassment and retaliation by a supervisor. Appellant noted that the supervisor was demoted in April 2011 and there was an ongoing investigation with regard to his behavior. She submitted a June 30, 2011 report from Dr. Joshua Wooley a psychiatrist, who provided a history that appellant was subject to sexual harassment by a colleague. Dr. Wooley stated that, based on appellant's reports of worsening anxiety and feeling unsafe at work, it appeared that her work situation had aggravated her underlying psychiatric condition. He diagnosed obsessive compulsive disorder (OCD), social anxiety disorder and generalized anxiety disorder.

On November 17, 2011 OWCP accepted a temporary aggravation of generalized anxiety disorder. A statement of accepted facts (SOAF) of the same date listed that OWCP had accepted as compensable work factors: (1) in the Spring of 2010 the identified supervisor was placed in charge of transcript litigation work, and some of appellant's work was reviewed by the supervisor, and (2) in August 2011 the employing establishment found that the evidence supported that the supervisor had created a hostile work environment.

The record reflects that appellant continued to work. On September 24, 2012 appellant submitted CA-7 claims for compensation from June 18 to October 31, 2012. She was referred for a second opinion examination to Dr. Charles Debattista, a Board-certified psychiatrist. In a report dated November 9, 2012, Dr. Debattista obtained a history that in April 2012 appellant suffered a panic attack when dealing with a new supervisor. He noted that she stopped work as of June 18, 2012. Dr. Debattista stated, with respect to disability, that the "primary precipitant was the reported harassment and retaliatory behavior of her previous supervisor, recapitulated by the current more recent supervisor who is a friend of the former supervisor."

In a report dated November 7, 2012, Dr. Wooley again reviewed a history of injury. He stated that in June 2012 appellant's symptoms significantly worsened. He stated that after intense treatment appellant improved and was able to return to work.

By decision dated December 14, 2012, OWCP denied the claim for wage-loss compensation from June 18 to October 31, 2012. It found that Dr. Wooley did not explain how or why appellant's condition worsened and caused total disability. OWCP also found that Dr. Debattista had determined appellant's disability was related to stress from her new supervisor, which was an alleged factor of employment that was not accepted under this claim. It noted appellant should file a new claim with respect to additional employment factors.

In a letter dated December 9, 2013 and received by OWCP on December 12, 2013, appellant requested reconsideration. In a statement dated December 9, 2013, she indicated that she worked at home from November 2011 to April 2012. Appellant stated that the investigation of the former supervisor concluded in April 2012, and he was not fired or demoted but transferred to another office. She stated this was extremely frustrating. After her return to office

work in May 2012, she was required to work on some of the former supervisor's cases. According to appellant this was a constant reminder of his prior actions.

Appellant submitted a February 6, 2013 report from Dr. Wooley, who quoted from his prior November 7, 2012 report with respect to her condition in April 2011. Dr. Wooley stated that in March 2012, appellant's office moved to a location next to two friends of her former supervisor, which was "incredibly stressful for [appellant] and significantly contributed to the continuation of her severe anxiety symptoms." He also reported that the former supervisor was not demoted, although appellant had been assured that something serious would be done, and she was assigned some of his cases. Dr. Wooley reported that the supervisor's friends "continued to harass and target [appellant]." He stated that June 2012 became the apex of appellant's emotional symptoms.

By decision dated March 3, 2014, OWCP denied appellant's reconsideration request, finding it insufficient to warrant merit review of the claim. It found that Dr. Wooley's February 6, 2013 report was similar to his prior November 7, 2012 report and did not discuss the relevant accepted work factors.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP 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."³ 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)(3) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

As noted, the Board does not have jurisdiction over OWCP's December 14, 2012 merit decision. The only issue before the Board is whether appellant has met the requirements of 20 C.F.R. § 10.606(b)(2) to require OWCP to reopen the case and review the merits of the claim for wage-loss compensation from June 18 to October 31, 2012.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, appellant did not meet this standard. Appellant submitted a narrative statement that reported her allegations of incidents that caused stress, without attempting to show that OWCP erroneously applied or interpreted a specific point of law.

² 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").

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

Moreover, she did not advance a relevant legal argument not previously considered by OWCP. Appellant did not advance a new and relevant legal argument with respect to the denial of her claim.

As to the question of whether appellant submitted relevant and pertinent evidence not previously considered, the Board notes that OWCP had accepted a temporary aggravation of generalized anxiety disorder. The accepted compensable work factors were that the supervisor had reviewed appellant's work and was found to have created a hostile work environment. OWCP denied the claim for wage loss commencing June 18, 2012 because the medical evidence did not establish that her claimed period of disability was causally related to the accepted condition or the accepted compensable work factors. To be considered new and relevant evidence, the medical report must provide new and relevant evidence regarding that specific issue.

Dr. Wooley provided more detail regarding his opinion as to appellant's disability commencing June 2012; but did not address the specific issue of causal relationship in this case. He referred to additional alleged factors of employment that occurred after the filing of the current claim: the office move to a location near friends of the former supervisor, the lack of appropriate disciplinary action against the former supervisor, working on the former supervisor's cases, and harassment by a new supervisor. These allegations are not the accepted work factors in the present case. It is well established that in emotional stress claims, when new factors are alleged, a new claim must be filed.⁵ As the Board explained in *Lorraine E. Smith*,⁶ a new claim is necessary as OWCP must make proper findings as to the compensability of new alleged factors.⁷

The Board accordingly finds that appellant did not submit new and relevant medical evidence on the issue presented in this case. When a physician does not address the accepted work factors, the report is not sufficient to warrant a merit review of the claim.⁸ Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied merit review in this case.

On appeal, appellant discussed the merits of her claim and argued that her claim for wage loss should not have been denied. She stated that her anxiety increased during the time of an employing establishment investigation, which did not conclude until April 2012. As stated, the

⁵ See *Lorraine E. Smith*, Docket No. 04-1699 (issued December 20, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c) (June 2013).

⁶ *Id.*

⁷ The December 14, 2012 OWCP decision did advise appellant that she could file a new claim. It is not clear from the record whether appellant has filed another claim for compensation based on new alleged work factors.

⁸ See *J.A.*, Docket No. 12-777 (issued November 16, 2012) (OWCP accepted compensable work factors but the report of the physician submitted on reconsideration did not address the compensable work factors and was not sufficient to require reopening the case for merit review).

Board does not have jurisdiction over the merits of the claim for compensation. The only issue is whether appellant's application for reconsideration was sufficient to require a merit review. For the reasons noted, the Board finds that OWCP properly denied merit review.

CONCLUSION

The Board finds OWCP properly denied appellant's application for reconsideration without merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2014 is affirmed.

Issued: December 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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