United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 14-1601**
	)	**Issued: December 10, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 15, 2014 appellant filed a timely appeal from a March 26, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's December 26, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 1, 2012 appellant, then a 59-year-old mail handler, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of duty as a result of her rehabilitation job being spontaneously withdrawn on August 16, 2010. She stated

[1] 5 U.S.C. § 8101 *et seq.*

that the spontaneous withdrawal aggravated a preexisting condition of job stress and depression. Appellant noted that she first became aware of her underlying condition on November 19, 1992 and realized it resulted from her employment on August 16, 2010.[2]

By letter dated August 13, 2012, OWCP advised appellant that additional evidence was needed to establish her claim. It advised appellant to consider whether she wanted to file a traumatic injury or occupational disease claim. OWCP further requested factual information identifying the specific events or incidents that she believed caused her emotional condition and a medical report addressing how those incidents caused the claimed emotional condition.

In an August 24, 2012 statement, appellant described a May 12, 2010 incident when Dan Davis, a postmaster, came to her desk and kept picking up and dropping mail into her flat tray. She noted that she was uncomfortable because Mr. Davis was involved in a sexual harassment complaint years ago. Appellant also alleged several instances when Larry Harrison, the manager of distribution operations, walked by her office space and leered and stared at her. She further described a specific incident when Mr. Harrison pulled a birdcage in front of her and blocked her from leaving her office space and another incident when Mr. Harrison blocked her path in the middle of a small aisle on June 8, 2010. Appellant noted that she filed grievances regarding these incidents but nothing changed. She reported that on August 16, 2010 her job duties in her rehabilitation position were withdrawn and she was told to end her tour. Appellant alleged that this withdrawal aggravated her existing condition which caused more stress to her already stressful situation of lost compensation, medical benefits, and unrepairable credit. She stated that she first experienced stress and duress in her workplace following a 1992 work injury and related several events of intimidation and harassment from management. Appellant submitted a witness statement regarding the May 12, 2010 incident with Mr. Davis.

In a May 22, 2005 statement, James P. Waggle, Jr., chief steward of the National Postal Mail Handlers Union, related appellant's allegations of harassment and duress after the employing establishment transferred her from the security room to the lobby at the employing establishment. He described various incidents of management making threats against appellant regarding her job.

In an October 9, 2008 medical report, Dr. Lina Nasr-Anaissie, a Board-certified family practitioner, stated that she had treated appellant since June 19, 2007 for generalized anxiety. She noted that in June 2008 appellant began to complain of increased anxiety at work due to another employee constantly staring at her. Dr. Nasr-Anaissie reported that appellant was taking medication and undergoing counseling for her anxiety.

In reports dated November 4 and December 10, 2008, Dr. James R. Moneypenny, a psychologist and counselor, related that appellant had been under his care since October 21, 2008 for treatment of job-related stress and adjustment disorder. He opined that her current working environment was negatively affecting her psychological stability and recommended that she remain off work until January 29, 2009.

[2] The record reveals that appellant submitted three previous occupational disease claims under File Nos. xxxxxx791, xxxxxx810, xxxxxx125 and one traumatic injury claim under File No. xxxxxx862.

Appellant submitted various disciplinary and grievance letters from 2000 to 2009, including a November 2, 2000 decision from the U.S. Equal Employment Opportunity Commission (EEOC) which found that the employing establishment discriminated against complainant on the basis of her race; a June 16, 2008 settlement letter which credited appellant back 8 hours of annual leave; and an October 29, 2009 suspension letter for continual absence from August 26 to October 12, 2009. Appellant also provided a November 25, 2008 notice from the employing establishment advising appellant that she was no longer eligible to use the Family and Medical Leave Act (FMLA) because she had exhausted her 12 weeks for the year.

In a June 2, 2010 union grievance form, appellant alleged that she experienced discrimination and a hostile work environment. She stated that Mr. Harrison pointed his finger at her and talked to her in a demeaning manner. Appellant also submitted a June 9, 2010 police investigation report which stated that Mr. Harrison had harassed her on numerous occasions.

In a June 16, 2010 report, Dr. William Rutledge, a Board-certified family practitioner, related appellant's complaints of agitation and depression that she attributed to harassment at her job for the past 20 years. Appellant described the harassment as nonverbal and sometimes sexual in nature. Dr. Rutledge diagnosed anxiety and depression and recommended that she remain off work for two weeks.

In an August 21, 2012 report, Dr. Moneypenny stated that he treated appellant since October 2008 for mental health conditions. He related that appellant complained of an ongoing pattern of harassment at her job since 1992. Dr. Moneypenny reported that appellant demonstrated clinically significant and disabling levels of anxiety and depression and noted that her initial diagnosis was adjustment disorder, with mixed emotional features and subsequent evaluation, which led to depressive disorder. He opined that the situation described by appellant, specifically the hostile work environment and failure of the employing establishment to make reasonable accommodations to her disabilities, had been the most significant and proximate cause to her emotional condition.

In an October 5, 2012 report, Dr. Rutledge noted that he had treated appellant since September 2009 for job-related stress. He related that appellant was working in a rehabilitation job offer due to her job-related carpal tunnel syndrome when these accommodations were withdrawn on August 16, 2010. Dr. Rutledge stated that this withdrawal aggravated her stress illness and worsened her symptoms.

In a December 13, 2012 statement, the employing establishment responded to the specific incidents of alleged hostile and stressful work environment in appellant's August 24, 2012 letter. It contended that appellant had worked with appellant for several years to accommodate her medical restrictions and that her harassment allegations were unfounded.

In a decision dated January 29, 2013, OWCP denied appellant's claim. It found that appellant did not establish fact of injury as she did not submit sufficient evidence to demonstrate that she experienced any compensable factors of employment and that the alleged incidents of harassment occurred as described.

In an appeal request form dated December 16, 2013 and received by OWCP on December 26, 2013, appellant requested reconsideration. She noted that her job stress started in 1992 when she was injured on duty and was aggravated on August 16, 2010 when her rehabilitation duties were withdrawn. Appellant stated that due to the withdrawal of her modified job offer and management's refusal of reasonable accommodations she was placed in hardship for years and experienced job stress, anxiety, insomnia, and depression because of lost compensation for wages, annual or sick leave, and other benefits. She explained her disagreements with OWCP's findings in the January 29, 2013 denial decision. Appellant described in detail her various encounters with Mr. Harrison when he intimidated and offended her. She also alleged that she reported various alleged hostile incidents with upper management to the union and the police and was inappropriately denied requests for FMLA leave.

In a June 5, 2012 union grievance form, appellant stated that on June 4, 2012 she received a Notice of Administration Separation that failed to advise her that an employee who was eligible for disability retirement but chose not to apply could not be separated until a complete medical report was received and the employee received retirement counseling. She noted that on August 16, 2010 she was sent home under the National Reassessment Process (NRP) and numerous absence inquiries. Appellant reported that she responded each time but received no response from the employing establishment. She requested that the Notice of Administrative Separation be rescinded.

Appellant submitted requests to use FMLA leave dated May 4 and September 23, 2009. She also resubmitted the June 2, 2010 union grievance form and Dr. Rutledge's October 5, 2012 medical report.

By decision dated March 26, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review under 5 U.S.C. § 8128(a). It determined that appellant's statement and the evidence submitted was cumulative and duplicate of evidence previously of record.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.[3] OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district office.[4]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

[3] 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

[4] 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[5]

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.[6] A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.[7] If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[8]

ANALYSIS

Appellant claimed that on August 16, 2010 she sustained an aggravation of an emotional condition when her modified job offer was suddenly withdrawn. In support of her claim, she submitted an August 24, 2012 statement describing various incidents with management that she believed contributed to a hostile and stressful work environment, a witness statement regarding a May 12, 2010 incident with Mr. Davis, and a May 22, 2005 statement from a union steward regarding appellant's grievances. Appellant also provided medical reports dated from October 9, 2008 to October 5, 2012 from Drs. Nasr-Anaissie, Moneypenny, and Rutledge regarding her treatment for anxiety, stress, and adjustment disorder as a result of her work environment. She further submitted disciplinary and grievance letters from 2000 to 2009, including a November 2, 2000 EEOC decision, a June 16, 2008 settlement letter, a November 25, 2008 denial of her request for FMLA leave, an October 29, 2009 suspension letter, a June 2, 2010 union grievance form, and a June 9, 2010 police investigation report. By decision dated January 29, 2013, OWCP denied appellant's claim finding that the factual evidence was insufficient to establish that she sustained a compensable factor of employment.

Appellant requested reconsideration by appeal request form received by OWCP on December 26, 2013. The only issue for determination before the Board is whether OWCP properly denied appellant's request for reconsideration. Appellant included a statement disputing the findings of OWCP's decision and repeating her allegations of harassment and a hostile work environment. She also submitted a June 5, 2012 union grievance form and May 4 and September 23, 2009 requests for FMLA leave that was not previously considered. Although these documents constitute new evidence, they are repetitive and substantially similar to the grievance forms and FMLA documents already considered by OWCP and, therefore, are cumulative in nature.[9] These documents do not provide any new or pertinent information

[5] 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[6] 20 C.F.R. § 10.607(a).

[7] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[8] *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[9] *See E.M.*, Docket No. 12-1899 (issued June 6, 2013).

regarding whether appellant sustained a compensable factor of employment. The Board has found that evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.[10] Accordingly, this evidence did not constitute a basis for further merit review of appellant's claim.

On appeal appellant argued the merits of her emotional condition claim. As previously noted in the jurisdiction section, however, the Board does not have jurisdiction over the merits of the claim. The only issue on appeal is whether OWCP properly denied appellant's request for reconsideration.

Appellant did not meet any requirements of 20 C.F.R. § 10.606(b)(2). She did not submit any evidence along with her request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant legal argument not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to reopen the case for review of the merits.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen her case for further consideration of the merits of her claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that OWCP properly denied appellant's December 26, 2013 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

[10] *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2014 nonmerit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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