

FACTUAL HISTORY

On November 16, 2010 appellant, then a 40-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition in the performance of duty caused by a pattern of harassment by Coworker J.P. in late October and early November 2010.

In a November 16, 2010 statement, the employing establishment's postmaster noted that appellant and the coworker had "never gotten along since 1995 for whatever reason(s)." She noted that J.P. had the authority to assign work tasks and monitor appellant's performance. The postmaster noted that appellant had worked "in an unsafe manner," requiring J.P. to speak with her about these deficiencies. She denied that the conversations constituted harassment.

In a November 17, 2010 statement, J.P. described speaking with appellant several times from October 29 to November 1, 2010 regarding her refusal to follow safety instructions or comply with established procedures. She refuted appellant's allegations of harassment. J.P. expressed willingness to attend mediation with appellant and enroll in an on-line interpersonal communications class.

Appellant also submitted a November 12, 2010 note from Dr. Michael W. Lucarelli, an attending osteopathic physician, who took her off work through December 8, 2010.²

In a December 16, 2010 letter, OWCP advised appellant that additional evidence was needed to establish her claim. It requested factual information corroborating the claimed incidents of harassment and a medical report addressing how those incidents that caused the claimed emotional condition.

In response, appellant submitted a November 21, 2010 statement alleging a pattern of harassment, hostility and disparate treatment by J.P. commencing in 2005. She also submitted grievance documents and additional reports from Dr. Lucarelli finding her disabled due to work stress.

By decision dated April 14, 2011, OWCP denied appellant's claim. It found that fact of injury was not established. OWCP found that appellant did not establish any compensable factors of employment as the alleged incidents of harassment were not established as factual.

In an April 3, 2012 letter, appellant requested reconsideration. She submitted a June 16, 2011 affidavit reiterating her allegations of harassment. Appellant also submitted statements from three coworkers alleging that J.P. treated appellant with disrespect or hostility on unspecified dates. She also provided a September 26, 2011 report from Dr. James A. Gallo, an attending Board-certified psychiatrist, reiterated her allegations of harassment and diagnosed post-traumatic stress disorder.

² Appellant submitted October 8, 2010 emergency room records regarding a fainting incident at work. However, she explained on December 28, 2010 that the fainting incident was "totally separate" from her compensation claim.

By decision dated May 24, 2012, OWCP denied modification of the April 14, 2011 denial finding that the evidence submitted on reconsideration did not establish a compensable factor of employment. It found that the coworkers' statements were too vague to substantiate appellant's allegations.

In an August 24, 2012 letter, appellant's attorney requested reconsideration. He contended that the three coworkers' statements were sufficient to corroborate appellant's allegations as factual. The attorney asserted that there was no evidence rebutting their general agreement with appellant's claims of harassment and hostility. Appellant submitted an August 11, 2012 statement reiterating her allegations and a November 26, 2010 grievance form.

By decision dated December 3, 2012, OWCP denied modification of the May 24, 2012 decision on the grounds that fact of injury was not established. It found that the additional evidence did not establish any of appellant's allegations as factual. OWCP noted that the coworkers' statements were too vague to substantiate her allegations.

In a July 17, 2013 letter, counsel requested reconsideration. He submitted appellant's June 24, 2013 statement reiterating her allegations, an April 24, 2013 note from Dr. Lucarelli diagnosing "work stress" due to a "hostile" work environment" and an April 25, 2013 note from a counselor.

By decision dated February 19, 2014, OWCP denied reconsideration without further merit review. It found that appellant's June 24, 2013 statement and counsel's July 17, 2013 letter did not constitute new, relevant evidence or argument. OWCP further found that Dr. Lucarelli's April 24, 2013 note was cumulative and repetitive of his correspondence previously of record. Further, the counselor's note was immaterial to the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show 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 Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁶ A claimant need only

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

⁶ *Helen E. Tschantz*, 39 ECAB 1382 (1988).

submit relevant, pertinent evidence not previously considered by OWCP.⁷ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.⁸

ANALYSIS

Appellant claimed that she sustained an emotional condition due to harassment by a coworker. In support of her claim, she submitted her November 21, 2010, June 16, 2011 and August 11, 2012 statements describing an alleged pattern of harassment by J.P., a coworker. Appellant also provided statements from other coworkers alleging that J.P. was hostile or disrespectful to her on unspecified dates. She further submitted notes from Dr. Lucarelli, an attending osteopathic physician. OWCP denied the claim by decisions dated April 14, 2011, May 24 and December 3, 2012. It found that appellant did not submit sufficient factual evidence to substantiate a compensable factor of employment. OWCP noted that statements by the employing establishment's postmaster and J.P. refuted appellant's allegations. Further, the statement of her coworkers were not specific as to instances of harassment.

Appellant requested reconsideration by July 17, 2013 letter. She provided a June 24, 2013 statement repeating her allegations of harassment, a psychiatric report and a note from a counselor. Appellant's statement is repetitive of those previously of record. Evidence which is duplicative or cumulative or repetitive in nature is insufficient to warrant reopening a claim for merit review.⁹ The psychiatric report is not relevant whether appellant established a compensable work factors and therefore does not comprise a basis for reopening the case.¹⁰ The counselor's note is immaterial to the claim as it is not relevant to whether appellant established a compensable employment factor.¹¹

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). 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. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review. Its February 19, 2014 decision denying reconsideration was proper under the law and facts of the case.

⁷ See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

⁸ *Annette Louise*, 54 ECAB 783 (2003).

⁹ *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁰ *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹¹ The Board notes that, if appellant were to establish a compensable factor of employment, the counselor's note would be of no probative value as counselors are not considered physicians under FECA. *D.N.*, Docket No. 13-1534 (issued March 12, 2014); see also *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA). See also 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

On appeal appellant asserts that OWCP denied her rights by not considering the medical evidence. She provided a copy of a March 26, 2011 medical report previously of record and considered by OWCP. The Board notes that such medical evidence is not relevant unless a claimant establishes a compensable factor of employment.¹² As appellant did not establish a compensable factor of employment in this case, OWCP did not need to consider the medical evidence.¹³ Appellant also contends that the employing establishment forced her to work with her harasser, triggering memories of past traumas. These arguments pertain to the merits of the claim. As noted, the Board does not have jurisdiction over the merits of the case.

CONCLUSION

The Board finds that OWCP properly denied reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 19, 2014 is affirmed.

Issued: October 7, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² *Marlon Vera*, 54 ECAB 834 (2003).

¹³ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).