

On appeal appellant asserts that the record establishes that she sustained an employment-related emotional condition.

FACTUAL HISTORY

On November 4, 2013 appellant, then a 60-year-old supervisor in the travel department, filed an occupational disease claim alleging that harassment and bullying by employing establishment management caused a panic disorder, stress, and depression. In an attached statement, she claimed that she first became aware of the conditions on or about May 2012 and the relationship to employment on August 14, 2013. On August 19, 2013 appellant stopped work. She stated that a number of supervisors in the travel department harassed and bullied her. Appellant specifically, stated that she was improperly reprimanded, improperly placed on a performance improvement plan, that a contract was improperly discontinued, that an audit was improperly done, and that she did not receive proper assistance in filing her claim.

In an October 21, 2013 report, Lillian S. Goertzel, Ph.D., advised that appellant required a leave of absence until at least November 30, 2013. On December 24, 2013 she advised that appellant was seen for outpatient psychotherapy and required a continued leave of absence until at least January 31, 2014.

In letters dated January 10, 2014, OWCP informed appellant of the evidence needed to support her claim and asked the employing establishment to respond.

In a February 8, 2014 report, Dr. Goertzel reported that appellant had attended a number of psychotherapy sessions beginning on May 14, 2013 with diagnoses of panic disorder and major depressive disorder. She indicated that appellant had described a number of events of mistreatment at work which caused her psychological diagnosis.

Appellant submitted a February 17, 2014 statement in which she described her job duties. She alleged that there was an overwhelming workload created by staffing shortages and minimal assistance from her managers, which led to increased stress. Appellant stated that she dealt with constant bullying and harassment and was threatened with removal from her supervisory position, and reiterated her description of events and concerns, with more detail, as compared to her prior statement. She related that she had prior stress conditions in 1993 and 2003 when she was a victim of reprisal for filing Equal Employment Opportunity Commission complaints. Appellant also submitted a number of reports from physicians at Penn Medicine. These included a treatment note dated May 31, 2012 in which Dr. Carol Chou, a Board-certified internist, reported that appellant's job stress began in 2006. Dr. Chou diagnosed stress reaction. On May 24, 2014 Dr. Michelle Hu, Board-certified in internal medicine, noted appellant's complaints of stress and depression. She diagnosed depressive disorder and noted that appellant was seeing a psychologist.

The employing establishment submitted statements from Jeffrey C. Vollum and Syvonne Carter, both of whom countered each of appellant's allegations with specific explanations.

By decision dated July 16, 2014, OWCP found that appellant had not established a compensable factor of employment and denied her claim. It further found that, even had she

established a compensable employment factor, the medical evidence of record was insufficient to establish causal relationship.

On August 13, 2014 appellant faxed a reconsideration request to OWCP, stating that additional information to support her request would be forthcoming. On an attached appeal request form, she checked that she was requesting reconsideration.

In a nonmerit decision dated September 12, 2014, OWCP denied appellant's reconsideration request. It noted that she submitted no evidence or argument to support her request.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.³ Section 10.608(a) of OWCP's regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain 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 new evidence not previously considered by OWCP.⁵ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated September 12, 2014 denying appellant's application for review. Because there is no OWCP merit decision within the Board's jurisdiction, the Board lacks jurisdiction to review the merits of her claim.⁷

The Board finds that, as appellant did not assert that OWCP erroneously applied or interpreted the law or advance a relevant legal argument not previously considered by OWCP, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).⁸

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.608(a).

⁵ *Id.* at § 10.608(b)(1) and (2).

⁶ *Id.* at § 10.608(b).

⁷ *Id.* at § 501.3(e).

⁸ *Id.* at § 10.606(b)(3); *see R.M.*, 59 ECAB 690 (2008).

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, it properly denied her reconsideration request.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board