

FACTUAL HISTORY

On April 6, 2012 appellant, then a 56-year-old clerk, filed a Form CA-2, occupational disease claim, alleging that she developed stress as a result of working in a hostile work environment. She became aware of her condition and realized it was causally related to her employment on January 12, 2012. Appellant stopped work on April 5, 2012.

In several statements dated February 16 to April 5, 2012, appellant alleged that her manager ordered her around and used a negative tone when speaking to her. She alleged that while faxing information to the union office on her lunch break her manager hit the stop button on the fax machine. Appellant alleged that she asked a coworker to verify passports and the coworkers told her to ask a manager to assist. She subsequently knocked on her manager's door, but her manager did not respond. Appellant alleged that her manager would instruct her to do various job assignments that she had already completed or assign her duties to other coworkers. She alleged that her manager embarrassed her by interrupting her at a window in the middle of a transaction with a customer. Appellant further alleged that a manager physically touched her in an unwanted manner.

Appellant submitted several reports from Dr. Jennifer Tau, a Board-certified family practitioner, dated March 29 to April 27, 2012, who treated her for work-related stress and anxiety, insomnia and headaches due to increased stressors at work. Dr. Tau opined that appellant's current medical condition was caused or aggravated by her work environment.

On April 30, 2012 OWCP advised appellant of the evidence needed to establish her claim and asked her to submit additional evidence that included a detailed description of the employment incidents that contributed to her claimed emotional condition. It also asked the employing establishment to respond to the claim.

In an undated questionnaire appellant indicated that she filed a grievance and an Equal Employment Opportunity (EEO) complaint. She submitted a witness statement from an unidentified coworker who noted working with appellant and witnessing disrespectful and belligerent postmasters. Appellant submitted reports from a counselor dated May 24 to 29, 2012 who treated her for adjustment disorder, anxiety, and depressed mood, and reports from Dr. Tau from June 26 to November 15, 2012. Dr. Tau diagnosed appellant with anxiety and insomnia related to employment stress. In an October 4, 2012 report, she noted treating appellant from January 12 to October 4, 2012 for work-related stress and anxiety. Appellant reported insomnia, irritability and anxiety due to stressors at work. Dr. Tau advised that appellant had been unable to work since January 12, 2012 and reported being assigned tasks already completed, and moved repeatedly to different operations on a daily basis. She opined that appellant's current medical condition was caused and aggravated by her employment environment and appellant has been unable to return to work due to the ongoing conflict with management.

The employing establishment submitted a statement from Jennifer Ok, a supervisor, dated May 16, 2012, who disputed appellant's allegations. Ms. Ok indicated that appellant was issued disciplinary actions, including official discussions and suspensions, for failure to follow instructions and improper conduct. She asserted that appellant never reported having work stress and she indicated appellant's stress was self-induced.

In a December 20, 2012 decision, OWCP denied appellant's claim for an emotional condition as the evidence did not support that the events occurred as alleged. It found that she had not established any compensable factors of employment.

On December 20, 2013 appellant's representative requested reconsideration. He indicated that the employing establishment's perception of a stressful condition was not a factor or a standard when evaluating a claim for work-related stress. Appellant's representative noted that it was not relevant as to whether appellant was disciplined or had performance problems. He indicated that the employing establishment submitted a statement from appellant's supervisor which did not dispute or controvert her allegations and therefore appellant's version of the events should be determined as factual. Appellant's representative asserted that OWCP erred in finding that she did not identify any incidents or events that were compensable and noted that her emotional condition arose as she was trying to meet the requirements of her job. Appellant also resubmitted Dr. Tau's October 4, 2012 report.

In a February 27, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP originally denied appellant's claim for an occupational disease claim as she failed to establish any compensable work factors as the cause of her claimed condition. Upon

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

reconsideration, it denied a review of the merits of appellant's claim because it did not meet the requirements of 20 C.F.R. § 10.606(b)(2).⁵

In her December 20, 2013 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant's representative noted that it was not relevant as to whether appellant was disciplined or had performance problems. He indicated that the employing establishment's perception of a stressful condition was not a factor or a standard when evaluating a claim for work-related stress. Appellant's representative asserted that the employing establishment and appellant's supervisor did not dispute or controvert her allegations and, therefore, appellant's version of the events should be determined as factual. He indicated that OWCP erred in finding that she had not identified any incident or events that were compensable and alleged that her emotional condition arose due to trying to meet the requirements of her job. Appellant's representative failed to identify particular job requirements attributed to appellant's condition. The Board has held that mere perceptions in emotional condition cases are not sufficient to form a basis for the payment of compensation.⁶ The underlying issue in this case is whether appellant has established a compensable employment factor. These general assertions do not show a legal error by OWCP or advance a new and relevant legal argument.

A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in support of her claim. Appellant submitted a report from Dr. Tau dated October 4, 2012. However, as there was no compensable factor established, any medical evidence would be irrelevant to the case. Further, this report was already in the record. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁷

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant has failed to show that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or constituted relevant and pertinent evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant's representative asserts that she submitted sufficient evidence to establish a compensable employment factor and a compensable injury. As explained, above, the Board does not have jurisdiction to review the merits of the claim. Appellant has not submitted

⁵ *Supra* note 3.

⁶ *See G.S.*, Docket No. 09-764 (issued December 18, 2009) (mere perceptions and feelings of harassment will not support an award of compensation); *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (mere perceptions of error or abuse are not sufficient to establish entitlement to compensation).

⁷ *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984). Furthermore, as appellant has not established a compensable factor of employment, the medical evidence addressing causal relationship, even if new, would not be relevant. *See C.T.*, Docket No. 08-2160 (issued May 7, 2009) (if a claimant has not established any compensable employment factors, OWCP need not consider the medical evidence).

any new relevant or pertinent evidence or argument in support of her reconsideration request that would warrant reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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