

**United States Department of Labor
Employees' Compensation Appeals Board**

S.M., Appellant)

and)

U.S. POSTAL SERVICE, HEALTH &)
RESOURCE MANAGEMENT,)
Pittsburgh, PA, Employer)

**Docket No. 15-0876
Issued: July 16, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 13, 2015 appellant timely appealed the October 3, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision of September 5, 2013, to the filing of the current appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

ISSUE

The issue is whether OWCP properly declined to reopen appellant's case for merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. §§ 8101-8193 (2006).

FACTUAL HISTORY

Appellant, a 61-year-old retired health and resource management (HRM) manager, has an accepted claim for temporary aggravation of major depressive disorder, temporary aggravation of hypertension, and temporary aggravation of generalized anxiety disorder, which arose on or about May 1, 2006.² By decision dated August 14, 2012, OWCP determined that appellant's accepted emotional/psychiatric conditions had resolved as of July 23, 2012.³ Appellant was also diagnosed with post-traumatic stress disorder (PTSD), but, OWCP has not accepted her PTSD as employment related. Appellant remains eligible for wage-loss or medical benefits with respect to her employment-related hypertension.

Appellant timely requested reconsideration of OWCP's August 14, 2012 decision. Her primary argument was that OWCP had not adequately addressed her PTSD. Appellant submitted a May 17, 2013 report from Dr. Hayne D. McMeekin, a Board-certified psychiatrist, who diagnosed PTSD and advised that appellant was currently unable to work. OWCP also received a May 8, 2013 report from Dr. Edwin A. Avbuere, a Board-certified internist, who diagnosed hypertension and anxiety.⁴ Dr. Avbuere indicated that appellant was unable to work under any stressful conditions as this would likely aggravate her conditions and undermine her performance.

In a September 5, 2013 decision, OWCP reviewed the merits of the claim, but denied modification of its August 14, 2012 decision.

By letter dated September 4, 2014, received by OWCP on September 5, 2014, appellant requested reconsideration. She submitted a July 31, 2014 report from her psychiatrist, Dr. McMeekin. Dr. McMeekin diagnosed PTSD and advised that appellant responded to medication, but this had not restored her to full function. He further noted that appellant remained impaired with respect to her ability to deal with minimal stress, such as that which occurs during normal work. Dr. McMeekin explained that this type of stress would be expected to cause increased anxiety, insomnia, and difficulty making decisions. In conclusion, he stated that it was his professional opinion that appellant was not able to work at this time.

In an October 3, 2014 decision, OWCP denied appellant's request for reconsideration, and thus, did not review the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain

² Appellant stopped work on June 24, 2008, and retired effective November 1, 2008.

³ OWCP based its decision on the June 23 and July 26, 2012 reports of Dr. Gerald M. Aronoff, a Board-certified psychiatrist and impartial medical examiner (IME).

⁴ Dr. Avbuere previously served as an OWCP referral (second opinion) physician.

⁵ This section provides in pertinent part: "[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." 5 U.S.C. § 8128(a).

limitations in exercising its authority.⁶ One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁷ A timely application for reconsideration, including all supporting documents, must 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.⁸ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

OWCP received appellant's most recent request for reconsideration on September 5, 2014. In her request dated September 4, 2014, appellant discussed various medical reports from Dr. Avbuere and Dr. Aronoff (IME), and questioned the reliability of Dr. Aronoff's findings regarding her current emotional/psychiatric condition. She also argued that Dr. Aronoff failed to address Dr. McMeekin's diagnosis of PTSD. Appellant raised the same or similar arguments in her previous request for reconsideration dated June 14, 2013.

The Board finds that appellant's latest request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance any relevant legal arguments not previously considered by OWCP. Accordingly, she is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(2).¹⁰

Appellant also failed to submit any "relevant and pertinent new evidence" with her most recent request for reconsideration. Dr. McMeekin's July 31, 2014 report is a verbatim reiteration of his May 17, 2013 report, which appellant submitted with her prior request for reconsideration. OWCP noted that Dr. McMeekin's latest report was similar to evidence already in the record and, therefore, cumulative and immaterial. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹¹ Consequently, Dr. McMeekin's July 31, 2014 report is insufficient to warrant further merit

⁶ 20 C.F.R. § 10.607 (2014).

⁷ *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at §§ 10.607(b), 10.608(b).

¹⁰ *Id.* at § 10.606(b)(2)(i) and (ii).

¹¹ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

review. Because appellant did not provide any “relevant and pertinent new evidence,” she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(2).¹² Accordingly, OWCP properly declined to reopen appellant’s case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that OWCP properly denied further merit review with respect to appellant’s September 4, 2014 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2014 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: July 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

¹² 20 C.F.R. § 10.606(b)(2)(iii).