



attending physician. She then submitted a report from another/a new attending physician and contended that this evidence was sufficient to establish her claim.<sup>3</sup>

### **ISSUE**

The issue is whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On August 4, 2010 appellant, then a 51-year-old management and program analyst, filed an occupational disease claim alleging that on March 9, 2010 she first realized that her stress, panic attacks, heart issues, headaches, dizziness, depression, anxiety, shoulder pain, grinding teeth, increased periodontal disease, and swollen ankles and feet were caused by her federal employment. She stated that, since 2000, she had been the sole supervisor of 25 employees and 6 compensated work therapy (CWT) patients. Appellant was the only management official responsible for daily transportation operations of the employing establishment's five-county service area and maintenance, service, assignment, and accidents for over 3,000 vehicles. She also ensured that over 300 employees who drove patients or were required to drive as part of their job had good driving records and passed a physical and written examination.

Appellant submitted factual evidence in support of her claim. In narrative statements, she described the incidents and conditions at work which she believed caused her physical and emotional conditions. Appellant submitted medical evidence which addressed her physical and emotional conditions, and work capacity.

In a February 7, 2011 decision, OWCP denied appellant's claim. It found that she failed to establish any compensable employment factors.

On March 4, 2011 appellant requested a telephone hearing with an OWCP hearing representative and submitted additional factual and medical evidence.

In an April 18, 2011 decision, an OWCP hearing representative set aside the February 7, 2011 decision and remanded the case for further development. He directed OWCP to obtain further information from the employing establishment about appellant's claimed work factors, including her claim that she frequently worked 10 to 12 hours a day and prepared reports after hours to meet the requirements of her position, that she encountered problems with daily operation of bus service, and that she had to deal with difficult employees under her supervision.

In a June 28, 2011 letter, the employing establishment stated that appellant was not required to work 10 to 12 hours. Appellant did encounter frequent issues involving bus service operation. She also had to deal with difficult employees.

By decision dated August 16, 2011, OWCP found that appellant had established 26 compensable factors of employment. It denied her claim, finding that the medical evidence did

---

<sup>3</sup> The Board has no jurisdiction to review new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1).

not establish that she had a medical condition in connection to any of the compensable factors of employment.

On September 12, 2011 and March 18, 2013 appellant requested reconsideration and submitted factual and medical evidence. In decisions dated April 3, 2012 and June 25, 2013, respectively, OWCP denied modification of its decision after conducting a merit review. It found that the medical evidence did not establish that appellant's medical conditions were causally related to the accepted employment factors.

By letter dated June 19, 2014, appellant requested reconsideration. She stated that her request was accompanied by a letter from the Office of Personnel Management (OPM) which approved her disability retirement. Appellant noted that her depression caused by job events was one of the reasons for the approval. She stated that a letter from the Social Security Administration (SSA), which denied her claim for disability benefits, also accompanied her reconsideration request.<sup>4</sup> Appellant related that a letter from her psychiatrist, which would arrive under separate cover, included the causal relationship between her health and job issues.

In an August 6, 2014 letter, appellant requested that OWCP authorize a change of physician from Dr. Sahgal because she had taken too long to provide evidence explaining causal relationship as requested by OWCP. On several occasions, commencing in August 2013, she asked Dr. Sahgal for the evidence and was told that it was forthcoming. Appellant requested that OWCP accept the report from Dr. Sahgal if she submitted it by August 31, 2014. She also requested time to undergo an evaluation by a new psychiatrist who could review Dr. Sahgal's notes and reports, and provide an opinion on causal relationship.

In a September 23, 2014 decision, OWCP denied merit review of appellant's claim. It found that the evidence submitted did not support that it had erroneously applied or interpreted a point of law or contain a relevant legal argument not previously considered. OWCP further found that the evidence submitted was irrelevant or immaterial. It noted that medical evidence from Dr. Sahgal had not been received.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128 of FECA,<sup>5</sup> OWCP's regulations provide that a claimant must: (1) show that 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.<sup>6</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>7</sup> Section 10.608(b) of the implementing regulations state that any

---

<sup>4</sup> The Board notes that the accompanying evidence from OPM and SSA is not contained in the record.

<sup>5</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the 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).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.607(a).

application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>8</sup>

### ANALYSIS

On June 19, 2014 appellant disagreed with OWCP's June 25, 2013 decision that she did not sustain an injury because the medical evidence of record did not establish that the claimed conditions were causally related to her accepted employment factors. She requested reconsideration. The underlying issue on reconsideration is medical in nature.

The Board finds that appellant did not show that OWCP erroneously applied or misinterpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered. In an August 6, 2014 letter, appellant requested that OWCP authorize a change of physician because Dr. Sahgal had failed to provide reports explaining causal relationship as requested by herself and OWCP. She also requested that OWCP accept Dr. Sahgal's report if it was submitted by a certain date and that she be allowed to undergo further evaluation by a new psychiatrist. Because the underlying issue is medical in nature, appellant's letter is not relevant. She merely explained the delay in submitting medical evidence to establish causal relationship and reported that she needed further evaluation by a new physician. No medical evidence accompanied her reconsideration request. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>9</sup> The Board finds, therefore, that appellant's August 6, 2014 letter is insufficient to reopen her claim for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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 new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant contends that OWCP refused to reconsider her claim. Dr. Sahgal sent four reports to OWCP that did not contain all of the requested information. Appellant stated that when she did not receive a timely fifth report from Dr. Sahgal regarding causal relationship she requested that OWCP authorize a change of attending physician. As discussed above, her delay in submitting medical evidence from Dr. Sahgal and need to undergo further evaluation by a new physician are not pertinent to the underlying issue in this appeal, *i.e.*, as to whether her claimed conditions were causally related to the accepted employment factors, which is medical in nature.

---

<sup>8</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>9</sup> *D'Wayne Avila*, 57 ECAB 642 (2006).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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