

FACTUAL HISTORY

On September 13, 2010 appellant, then a 46-year-old social worker, filed an occupational disease claim alleging a work-related emotional condition due to “chronic job stress.” She first became aware of her claimed condition on March 2, 2010. Appellant stopped work on August 19, 2010. Regarding the relationship of her claimed condition to her employment, appellant stated, “Hostile work environment. Supervisor renegeing on agreements and continuous untruthful behavior and threats; hostile behavior by coworkers. Isolated and alienated; collusion to wrongly discredit me. Disregard for my knowledge and experience as senior staff who developed the program.”

In an undated statement received on October 19, 2010, appellant further described the incidents and conditions at work which she believed caused her to develop an emotional condition. She stated that on June 20, 2008 she commenced working a new program that involved issuing housing vouchers of homeless veterans and she discussed the nature of her caseload in this job. Many of the veterans appellant dealt with were “beyond the level of care” and had various mental health and substance abuse issues, problematic legal histories, income problems, eviction histories, and behavioral problems. She directly dealt with veterans who had serious psychiatric conditions, including one who had problems with hoarding and another who included her in his terrible delusions. One veteran had her week old infant removed from her home. Appellant stated that she perceived a risk to herself from some of these veterans and that she consequently had problems sleeping. She asserted that she had to carry out her work duties by herself and that her supervisor did not provide adequate supervision and support. Appellant alleges that he did not comply with her requests to have staff meetings to discuss social work programs and clinical issues. She indicated that in September 2009 one of the veterans with whom she worked committed suicide. Appellant reported work deficiencies of a coworker, but her supervisor did not support her with respect to this matter. She claimed that on March 2, 2010 her supervisor called her a liar when discussing the subject of splitting her caseload with coworkers. Appellant alleged that her coworker and supervisor planned “this attack” on her. She discussed meetings she had in April 2010 with Mr. Twiss and claimed that he unfairly criticized her in these meetings. Appellant’s supervisor also acted negatively on one occasion when she advised him that she did not want to meet with him and she asserted that a counselor from the Employee Assistance Program “verbally attacked” her in her office. Appellant discussed her psychiatric condition and the medical treatment she received for it.

In an October 1, 2010 statement, appellant’s supervisor reported on April 20, 2010 that he and another supervisor spoke to appellant about complaints lodged by coworkers about her behavior towards them, but he denied that she was subjected to harassment. He also noted that she provided direct patient care services to veterans and that her job responsibilities were no more stressful than those of any other staff member.

Appellant submitted a September 10, 2010 report in which Dr. Rodney Birney, an attending Board-certified psychiatrist, diagnosed post-traumatic stress disorder, adjustment disorder with depressed and anxious mood due to a hostile work environment, and low-level depression or dysthymia.

In a February 4, 2011 decision, OWCP denied appellant's emotional condition claim as she failed to establish any compensable work factors with respect to her work duties, harassment from supervisors and coworkers, or error and abuse with respect to administrative matters.

In a January 6, 2012 letter received on January 24, 2012, appellant requested reconsideration. She discussed the various problems of the veterans with whom she worked in the housing voucher program. Appellant discussed her interactions with her coworker and detailed her supervisor's failure to provide her adequate support. She detailed her medical treatment and her work history after 2010. Appellant also submitted additional medical reports of Dr. Birney.

By decision dated April 4, 2012, OWCP affirmed its February 4, 2011 decision denying appellant's claim for a work-related emotional condition. It continued to find that she had not established any compensable work factors.

In a form received on April 4, 2013, appellant requested reconsideration. She asserted that she sustained stress because she worked in a position that involved issuing housing vouchers for homeless veterans. Appellant indicated that the veterans who participated in the program had been rejected from other programs and were "beyond the level of care." These veterans encountered numerous difficulties due to psychiatric, medical, and/or behavioral problems and many of them had little income along with histories of crime and/or evictions. Appellant discussed the process for obtaining housing vouchers and further detailed the problems she had to address with these veterans, including problems with drug and alcohol abuse, untreated psychiatric conditions (including in one case a veteran who had delusions about her), arrests for criminal behavior, serious medical issues such as cancer and strokes, violent actions, and damage committed in prior residences. In September 2009 a veteran with whom she had worked committed suicide. Appellant noted that she worked with a veteran who had her baby taken away from her and that she felt she was in danger when visiting mentally unstable veterans. She claimed that she worked alone in her office without adequate support. Appellant indicated that, after she reported the work deficiencies of her coworker, she was subjected to retaliation, and the coworker made her life miserable. She claimed that her supervisor failed to adequately support her, particularly with respect to her interactions with the particular coworker. Appellant discussed the progression of her psychiatric condition and the medical treatment she received for it. She also submitted an undated document in which she claimed that Mr. Haden made derogatory comments to her.

Appellant submitted several copies of e-mail communications that were sent to her, including a May 27, 2008 e-mail from her supervisor regarding interviews for a "HUD/VASH" position opening; an April 22, 2010 e-mail from another coworker asking her to pass on information about the housing voucher process; and a July 28, 2010 e-mail from her supervisor informing her that he needed to be advised if she was not going to be in the office. She also submitted e-mails she sent to others, including April 6 and 29, 2010 e-mails which appear to list names of veterans and dates of referral; and a June 15, 2010 e-mail in which she described an encounter with her supervisor, noting that she had refused to meet with him and that he responded, "You can't do that! You can't refuse to talk to your supervisor."

Appellant submitted a list of reports submitted by her coworker of whom she complained, which contained her notation that he “has done very little reporting.” In a handwritten note, a veteran advised her that he was doing much better and that he would give her a call. Appellant provided a notation on this note indicating that she had a good relationship with this veteran, but that he was in danger of eviction for hoarding. She also submitted a March 25, 2013 report of Dr. Birney as well as several reports of attending social workers.

In an April 22, 2013 decision, OWCP denied appellant’s request for further review of the merits of her claim as it was untimely filed and failed to show clear evidence of error in its April 4, 2012 decision denying her emotional condition claim. It noted that her reconsideration request was received on April 3, 2013.

OWCP issued a second decision on April 29, 2013 clarifying that appellant’s reconsideration request had been received on April 4, 2013, rather than April 3, 2013 as stated in the previous decision.

In an April 28, 2014 order remanding case, the Board set aside OWCP’s April 29, 2013 decision and remanded the case to OWCP for further development. The Board found that OWCP improperly evaluated appellant’s April 4, 2013 reconsideration request under the clear evidence of error standard for untimely reconsideration requests. The Board found that her reconsideration request was timely. The Board directed OWCP to evaluate the request under standards for timely reconsideration requests and to issue an appropriate decision.

In a May 9, 2014 decision, OWCP denied appellant’s request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the statement she submitted in connection with her reconsideration request was similar to previously submitted statements and that it had already considered and rejected the arguments contained in the statement. OWCP noted that the newly submitted e-mail communications were not relevant to appellant’s claim as they did not provide support for her arguments regarding potential work factors. It found that the other documents submitted by her were not relevant to her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP regulations provide that the evidence or argument submitted by 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.⁴ 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.⁵ When a claimant fails to

³ Under section 8128 of FECA, “[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).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁹ To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰ Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹¹ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹²

ANALYSIS

The Board does not have jurisdiction over the merits of appellant's claim.¹³ The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument.

Appellant's argument on reconsideration was that she established work factors which she believed caused her to develop an emotional condition. She submitted a statement in which she asserted that she sustained stress because she worked in a position that involved issuing housing vouchers for homeless veterans. Appellant indicated that the veterans who participated in the program had been rejected from other programs and were "beyond the level of care." These

⁶ *Id.* at § 10.608(b).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁸ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ *David W. Shirey*, 42 ECAB 795-96 (1991).

¹¹ *Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹² *William H. Fortner*, 49 ECAB 324 (1998).

¹³ *See supra* note 1. On the merits, OWCP had denied appellant's claim for a work-related emotional condition. The last merit decision was dated April 29, 2013.

veterans encountered numerous difficulties due to psychiatric, medical, and/or behavioral problems and many of them had little income and histories of crime and/or evictions. Appellant discussed problems she had with a coworker after she reported deficiencies in his work product. She also detailed her interactions with her supervisor noting that he did not provide her with adequate support. The Board finds that the submission of this statement would not require reopening of appellant's claim because the statement was similar to previously submitted statements and OWCP had already considered and rejected the arguments contained therein.¹⁴ For example, in an undated statement received on October 19, 2010 and another statement dated January 6, 2012, appellant had already discussed these same matters.¹⁵

A claimant may be entitled to a merit review by submitting new and relevant evidence. She submitted various email communications which addressed matters such as interviews for a position, a request to pass on information about the housing voucher process, a request by her supervisor to be informed if she was not going to be in the office, and her own description of a June 15, 2010 encounter with him. Appellant submitted a list of reports submitted by her coworker and a handwritten note from a veteran who had problems with hoarding. The Board finds that, although this evidence is new, it is not relevant because it does not directly relate to her claim that she was exposed to various work factors which caused her claimed condition. Such nonrelevant evidence cannot serve as a basis for reopening appellant's claim.¹⁶ As noted, appellant's emotional condition claim was denied because she failed to establish any compensable work factors with respect to the performance of her work duties or with respect to exposure to harassment or error and abuse in administrative matters.¹⁷ She also submitted a March 25, 2013 report of Dr. Birney, an attending psychiatrist. However, as there are no compensable factors of employment, the medical evidence is not relevant to appellant's claim.¹⁸

The Board accordingly 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 submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁹

¹⁴ See *supra* note 6.

¹⁵ Appellant also submitted an undated document on April 4, 2013 in which she claimed that a coworker made derogatory comments to her. She had already presented similar claims in previous statements considered by OWCP.

¹⁶ See *supra* note 7.

¹⁷ See *supra* notes 8 through 11+-.

¹⁸ When a claimant has not established any compensable employment factors in a given claim, it is not necessary to consider the medical evidence of record. *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁹ On appeal appellant provided discussion of her job duties, but OWCP had already considered these arguments in prior decisions.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board