

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).

On appeal, appellant contends that contrary to OWCP's finding that her request for reconsideration lacked substantial legal questions and new and relevant evidence, her reconsideration request included evidence showing how the agency erred and acted abusively in the administration of personnel matters. She also contends her request for reconsideration detailed and included new and relevant evidence that OWCP failed to consider in its decision.

FACTUAL HISTORY

On June 28, 2012 appellant, then a 27-year-old paralegal specialist case manager, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2012 she suffered from stress due to harassment and retaliation at work. She claimed that she was followed into a lobby and threatened with physical violence by her supervisor. To this claim OWCP assigned File No. xxxxxx941.

On July 13, 2012 appellant filed an occupational disease claim (Form CA-2) regarding the June 15, 2012 incident. To this claim OWCP assigned File No. xxxxxx929.

In a July 16, 2012 narrative statement, appellant contended that her supervisor's actions on June 15, 2015 created a hostile work environment. She asserted that her supervisor's verbal assault occurred after she was subjected to repeated acts of harassment and intimidation since she had filed a claim against her supervisor on or about February 4, 2010 with the Equal Employment Opportunity (EEO) Commission. Appellant sought medical treatment on June 19, 2012 from her primary physician. She claimed that she had completely lost her appetite and could not sleep. Appellant's recall and short-term memory may have also been affected. She experienced increased feelings of anxiety and depression because leadership had not implemented any processes to ensure her safety or conducted an investigation despite the seriousness of her allegations of threats of workplace violence by her supervisor.

In a July 31, 2012 narrative statement, appellant attributed her emotional condition to additional actions of her supervisor, which included being unapproachable, hostile, or unwilling to listen to her questions related to the distribution of workloads and using threats and intimidation of giving her a negative performance rating. The EEO claim was resolved in December 2010 under an alternative dispute resolution. Following the physical threats made by her supervisor on June 15, 2012, she filed a report with the Federal Protection Service and filed a second EEO claim against her supervisor.

On August 2, 2012 OWCP advised appellant that it had deleted File No. xxxxxx941 as a duplicate of File No. xxxxxx929 and began developing appellant's claim as an occupational disease claim.

Appellant submitted several documents in support of her claim for a work-related emotional claim. A number of the documents related to her position description; her work

assignments; the EEO claims she filed alleging discrimination and harassment based on her skin color, race, and sex and reprisal regarding her immediate supervisor's negative and hostile responses to her questions related to the fair distribution of workloads and work assignments; the denial of her requests for reassignment; a demand to work 24 hours of credit time; and her request for reasonable accommodation and the threat of physical violence on June 15, 2012.

Reports from appellant's licensed clinical social worker and medical records dated June 26 to November 26, 2012 addressed appellant's emotional and physical conditions, disability status, and medical treatment.

In a January 28, 2013 decision, OWCP denied appellant's claim. It found that she had failed to provide sufficient evidence to establish a compensable factor of employment. OWCP also found that the medical evidence did not establish a causal relationship between a compensable work factor and appellant's diagnosed conditions.

Following a request for a hearing, by decision dated September 11, 2013, an OWCP hearing representative affirmed the January 28, 2013 decision. She found that appellant had failed to provide sufficient evidence to show that the employing establishment committed error or abuse with respect to administrative matters or that management subjected her to harassment and discrimination.

In a September 8, 2014 letter, appellant requested reconsideration. She contended that her supervisor subjected her to harassment and discrimination and committed error or abuse with respect to administrative matters. Appellant also argued that the medical evidence established that she had a work-related emotional condition and that OWCP ignored medical evidence from her licensed clinical social worker.

Appellant submitted documents, including the employing establishment's policy on prevention and elimination of harassment in the workplace and witness statements regarding the June 15, 2012 incident. Medical reports from her licensed clinical social worker addressed her emotional and physical conditions, disability status, and medical treatment.

In a December 10, 2014 decision, OWCP denied further merit review of appellant's claim. It found that her request for reconsideration did not raise any substantive legal questions or include new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128 of FECA,³ 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.⁴ To be entitled to a merit review of an OWCP decision denying or

³ 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).

⁴ 20 C.F.R. § 10.606(b)(3).

terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁵ Section 10.608(b) of the implementing regulations state that any 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.⁶

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.⁷ Its procedures further specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.⁸ These requirements are supported by Board precedent.⁹

ANALYSIS

The Board finds that OWCP did not provide adequate findings of fact or clear reasoning in support of its denial of appellant's request for further merit review of her emotional condition claim. In support of her September 8, 2014 request for reconsideration, appellant contended that her supervisor subjected her to harassment and discrimination and committed error or abuse with respect to administrative matters. She also argued that the medical evidence established that she had a work-related emotional condition and that OWCP had ignored medical evidence from her licensed clinical social worker.

In its December 10, 2014 decision, OWCP denied appellant's request for further merit review by determining that her request did not raise any substantive legal questions or include new and relevant evidence. However, in support of this determination, it merely stated, her "letter neither raised substantive legal questions nor included new and relevant evidence." OWCP did not provide any discussion of the arguments or evidence appellant submitted in support of her reconsideration request.

For these reasons, appellant was not apprised of the precise defect of her claim or the kind of evidence which would tend to overcome it.¹⁰ The case will be remanded to OWCP for further consideration of the evidence and arguments submitted by appellant in support of her

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁹ *See James D. Boller, Jr.*, 12 ECAB 45 (1960).

¹⁰ *See* 20 C.F.R. § 10.126.

reconsideration request to be followed by an appropriate decision, containing adequate facts and findings, regarding whether she is entitled to a review of her claim on the merits.¹¹

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether OWCP properly refused to reopen appellant's case for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: October 15, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ See *supra* notes 8 through 10.