



## **FACTUAL HISTORY**

Appellant, a 62-year-old revenue officer, has an accepted claim for temporary aggravation of somatization disorder, generalized anxiety disorder, and migraine which arose on or about March 11, 2008. In accepting appellant's emotional condition claim, OWCP found, *inter alia*, that her revenue officer position was a stressful job, with many responsibilities, demands, and daily deadlines. After a period of temporary total disability, appellant resumed her regular duties effective March 23, 2009.

In July 2013, appellant filed several claims (Form CA-7) for intermittent wage-loss, including one that covered the period July 6 through September 28, 2012.<sup>3</sup> She returned to work on October 1, 2012.

Medical evidence relevant to the claimed period included a June 13, 2012 return to work certificate from Dr. H  l  ne Saad, a family practitioner. Dr. Saad advised that appellant would be able to resume work on June 25, 2012. In a June 20, 2012 report, Dr. Saad indicated that appellant was unable to work as a revenue officer due to severe headaches. She further noted that appellant was disabled from June 11 through July 9, 2012. Dr. Saad referred appellant to a neurologist for further evaluation.

Dr. Zhanna Rapoport, a neurologist, examined appellant on July 2, 2012 and advised that she should remain off work until July 29, 2012. She reexamined appellant on July 25, 2012 and reported that she was unable to work due to severe headaches. According to Dr. Rapoport, appellant had been disabled since July 2, 2012 and was expected to return to work on September 1, 2012.

In an August 14, 2012 attending physician's report, Dr. Priti Sahgal, a psychiatrist, diagnosed major depressive disorder, panic disorder without agoraphobia, post-traumatic stress disorder (PTSD), and attention deficit hyperactivity disorder (ADHD). Dr. Sahgal identified March 11, 2008 as the date of injury. The reported history of injury was "[s]evere stress and anxiety." Dr. Sahgal noted that she first examined appellant on February 3, 2009. Current examination findings included depressed mood, anxiousness, inability to focus, low energy, lack of motivation, hopelessness, and a daily feeling of being overwhelmed. Dr. Sahgal checked the appropriate box indicating her belief that appellant's condition was caused or aggravated by employment activity; but did not elaborate. Appellant's current treatment consisted of medication management and supportive psychotherapy. Dr. Sahgal advised that appellant could return to work only if she was transferred to another supervisor. In the remarks section, she noted that appellant was previously on disability for mental and/or physical problems due to work-related stress. Dr. Sahgal reiterated that under no circumstances should appellant continue working with her current supervisor/manager.

In an August 22, 2012 report, Dr. Rapoport indicated that appellant had been under her care since July 2, 2012 for chronic migraine headaches. Appellant's symptoms included severe headache and an inability to concentrate, which first arose on June 11, 2012. Dr. Rapoport advised that appellant could not yet return to work because her headaches were currently

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<sup>3</sup> Appellant stopped working on June 11, 2012. Her leave status between June 11 and July 6, 2012 is unclear.

uncontrollable. She further noted that there was severe stress at work that complicated the outcome of treatment. Dr. Rapoport anticipated a return to work on October 1, 2012, but for now appellant remained disabled.

On September 20, 2012 Dr. Rapoport advised that appellant was “[released] back to work [October 1, 2012].”

Appellant resumed her regular employment duties on October 1, 2012.

In a July 29, 2013 recurrence development letter, OWCP advised appellant that the reports from Drs. Saad, Rapoport, and Sahgal (June 13 through September 20, 2012) were insufficient to establish her claimed disability during the period July 6 through September 28, 2012. It advised appellant to submit additional medical evidence in support of her claimed recurrence of disability. Additionally, OWCP requested a more detailed account of the circumstances surrounding appellant’s June/July 2012 work stoppage, including information regarding the type of work she performed on or after March 23, 2009, and why she believed her current disability was due to her original injury/illness.

In an undated response received on September 9, 2013, appellant advised OWCP that, shortly after returning to work in March 2009, the employing establishment blindsided her with a series of letters regarding a purported overpayment of approximately \$15,000.00, which she had been trying to resolve ever since. The employing establishment reportedly garnished appellant’s wages, which caused financial stress.

Appellant also reported difficulties with her supervisor with whom she began working in April 2010. The supervisor allegedly “continued to heap stress” on appellant by not accepting her work, and belittling her with a negative tone. Appellant also claimed that she refused to listen to her point of view and made her feel worthless. She stated that the supervisor nit-picked her work. Appellant also alleged that her actions were driven by her relationship with appellant’s estranged husband. She provided examples of various mid-year reviews, performance improvement counseling, annual appraisals, and other personnel actions that occurred during the period December 2010 and December 2012.

Since resuming work in March 2009, appellant noted having been diagnosed with carpal tunnel syndrome, undergoing bladder surgery, and having a breast biopsy. She further indicated that her brother suffered a stroke in August 2010, and passed away on December 14, 2010. Appellant reportedly took a total of four weeks’ annual leave related to her brother’s illness and subsequent death. Another brother also suffered a stroke in October 2011, and her supervisor reportedly was reluctant to approve appellant’s leave request because she had fallen behind at work. Lastly, appellant noted that when she arrived at work on June 11, 2012 she was already suffering a migraine. Appellant went to the nurse’s office and learned that her blood pressure was high. Also, by then, she had a full-blown migraine. Consequently, appellant left work and went to her own doctor, who reportedly took her off work that same day. She also indicated that, within a few days, her physician had referred her to a neurologist, who kept her off work from June through September 2012.

In an August 7, 2013 attending physician’s report (Form CA-20), Dr. Rapoport identified March 11, 2008 as the date of injury, and noted a June 11, 2012 history of recurrent severe

migraines. Her findings included severe headaches and frequent pain upon returning to work. Dr. Rapoport diagnosed employment-related PTSD and severe migraines. She explained that appellant was feeling worse because of stress she experienced at work, was disabled from June 11 through September 28, 2012, and was able to resume regular work as of October 1, 2012. Dr. Rapoport recommended that appellant continue to see a psychiatrist.

In an August 13, 2013 note, Dr. Rapoport indicated that, since October 2012, appellant suffered frequent, severe migraines exacerbated by stress.

By decision dated December 2, 2013, OWCP denied appellant's claim for wage-loss compensation for the period July 6 through September 28, 2012. It found the evidence insufficient to establish that appellant was temporarily totally disabled as a result of her accepted work injury.

On August 8, 2014 appellant requested reconsideration. She stated that her July 6, 2012 recurrence was the result of an accumulation of stressful, work-related events that caused severe anxiety, depression, and migraines. Appellant explained that she went from receiving a performance award to being placed on a performance improvement letter and having to meet with her manager daily/weekly. She claimed that work-related stressors aggravated her preexisting condition to the point that she was no longer able to perform her duties as a revenue officer. Appellant further indicated that her supervisor made the work environment unbearable with her micromanaging and daily monitoring. She noted that her supervisor demanded they have weekly caseload meetings to set deadlines, follow-ups, and action dates. However, this was a two-hour process and the weekly meetings made it impossible for appellant to meet her deadlines. Appellant accused her supervisor of making derogatory remarks and threats. She also noted that her request for a reasonable accommodation had been denied. Appellant claimed that her supervisor's tyrannical actions caused her condition to worsen. Lastly, appellant noted having filed an Equal Employment Opportunity (EEO) complaint prior to returning to work on October 1, 2012 and, as a result of the EEO filing, appellant had since been transferred.

On reconsideration appellant resubmitted the August 14, 2012 report (Form CA-20) from Dr. Sahgal and the August 7, 2013 report (Form CA-20) from Dr. Rapoport.

Appellant also submitted a copy of Dr. Sahgal's November 14, 2011 reasonable accommodation request. Dr. Sahgal diagnosed ADHD, major depressive disorder, and generalized anxiety disorder found that appellant's symptoms had worsened as a result of work stress. Dr. Sahgal noted that appellant had difficulty completing tasks, had a sad mood, low energy, lack of motivation, a sense of helplessness and hopelessness, loss of interest, and that her activities of daily living took tremendous effort. Additionally, she commented that appellant's severe anxiety worsened her physical symptoms, especially pain and migraines. Dr. Sahgal explained that this was an ongoing condition and would likely persist as long as appellant continued to work with her current supervisor. She noted that appellant's supervisor was friends with appellant's exhusband, and the supervisor was influenced by the exhusband to escalate the pressure at work, thus making appellant's symptoms worse. Dr. Sahgal recommended a transfer to a new department and advised that appellant should be allowed additional time to complete

tasks. She reiterated that appellant's symptoms had significantly worsened as a result of escalating pressure from her supervisor.<sup>4</sup>

OWCP reviewed the merits of appellant's recurrence claim, but denied modification. In a November 6, 2014 decision, it noted that several of appellant's current diagnoses (ADHD, PTSD, and major depressive disorder) were not accepted conditions. Additionally, OWCP noted that appellant attributed her current disability to incidents that allegedly occurred after she returned to work in March 2009. Accordingly, it denied appellant's claimed recurrence because the record failed to establish disability beginning July 6, 2012 causally related to the March 11, 2008 employment injury.<sup>5</sup>

Appellant timely requested reconsideration of the November 6, 2014 merit decision. She also filed a notice of recurrence (Form CA-2a) claiming lost wages beginning July 6, 2012.

Appellant submitted additional medical evidence, which included a May 21, 2014 report from Dr. Caryn I. Bernstein, a Board-certified psychiatrist with the DVA. Dr. Bernstein advised that appellant had been under her care since April 25, 2014, and she had seen her on two occasions. She further noted that appellant had been seeing a DVA psychologist on a weekly basis since April 16, 2014. Dr. Bernstein reported that appellant was being treated for major depressive disorder, PTSD, and generalized anxiety disorder. She further noted that despite appellant's commitment to treatment and adherence to medications, she was suffering from debilitating symptoms, which included mood instability, poor concentration and attention, depressed mood, and poor sleep. Dr. Bernstein advised that appellant was currently incapable of working. Additionally, she indicated that stress at work would further destabilize appellant, and returning to work would be an additional threat to her health.

OWCP also received a May 27, 2014 report from Dr. Sahgal, which was an almost verbatim reiteration of Dr. Bernstein's May 21, 2014 report. She too noted that appellant had been seeing a DVA psychologist weekly since April 16, 2014. Dr. Sahgal also reported that appellant was being treated for major depressive disorder, PTSD, and generalized anxiety disorder, and that she was currently unable to work.

In a March 6, 2015 decision, OWCP denied appellant's request for reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup> Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical

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<sup>4</sup> Dr. Sahgal's reasonable accommodation request predated appellant's June/July 2012 work stoppage, and thus, did not specifically address appellant's claimed disability beginning July 6, 2012.

<sup>5</sup> OWCP advised appellant to file a new emotional condition claim.

<sup>6</sup> 20 C.F.R. § 10.5(x).

limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>7</sup> Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.<sup>8</sup> A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.<sup>9</sup>

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.<sup>10</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.<sup>11</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.<sup>12</sup> The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

The current emotional condition claim is accepted for temporary aggravation of somatization disorder, generalized anxiety disorder, and migraine, which arose on or about March 11, 2008. OWCP found that appellant's revenue officer position was a stressful job, with many responsibilities, demands, and daily deadlines. It also accepted that prior to March 2008, appellant had been working long hours in an attempt to meet various deadlines. She had also experienced some workload management problems while on a 120-day detail because of the quantity of work assigned. These accepted employment incidents/factors were unique to the pre-March 11, 2008 timeframe.<sup>14</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

<sup>9</sup> 20 C.F.R. §§ 10.5(x), 10.104(c), and 10.509; see *id.* at Chapter 2.1500.2b (June 2013).

<sup>10</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>11</sup> 20 C.F.R. § 10.104(b); see Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 2.1500.5 and 2.1500.6 (June 2013).

<sup>12</sup> See *S.S.*, 59 ECAB 315, 318-19 (2008).

<sup>13</sup> *Id.* at 319.

<sup>14</sup> OWCP's December 18, 2008 statement of accepted facts (SOAF) identified four employment events that were factually established and considered within the performance of appellant's duties. The SOAF also identified another four events that were factually established, but did not occur within the performance of duty. Lastly, the December 18, 2008 SOAF identified another five alleged events that were unsubstantiated.

Appellant was off work for approximately one year prior to returning to her regular revenue officer duties on March 23, 2009. She stopped work again on June 11, 2012, and claimed wage-loss compensation for temporary total disability for the period July 6 through September 28, 2012. Appellant resumed her regular duties effective October 1, 2012.

As noted, a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>15</sup>

Based on appellant's September 9, 2013 statement, her June/July 2012 work stoppage was due to accumulated stress from a variety of workplace events that allegedly occurred after she returned to work in March 2009. Appellant identified a personal overpayment issue that she had reportedly been fighting since April 2009, but most of her complaints and alleged workplace stressors involved her relationship with her supervisor with whom she first worked in April 2010. She variously described her supervisor as a micromanager and a tyrant. Ms. White's reported animus towards appellant reportedly stemmed from her relationship with appellant's exhusband.

By her own account, appellant's accepted conditions did not spontaneously change.

The Board finds that the medical evidence of record fails to demonstrate a causal relationship between appellant's June/July 2012 work stoppage and her original injury of March 11, 2008.

In a June 20, 2012 report, Dr. Saad, a family practitioner, indicated that appellant was unable to work as a revenue officer due to severe headaches, and had been disabled since June 11, 2012. However, she did not specifically relate appellant's disability to her March 11, 2008 employment injury. Dr. Saad referred appellant to Dr. Rapoport, a neurologist, who examined appellant on July 2, 2012, and similarly found that she was unable to work due to severe headaches. At the time, Dr. Rapoport did not specifically address the cause of appellant's chronic migraine headaches.

In an August 14, 2012 report (Form CA-20), Dr. Sahgal, a psychiatrist, diagnosed PTSD, ADHD, major depressive disorder, and panic disorder without agoraphobia. She identified March 11, 2008 as the date of injury, with a reported history of "[s]evere stress and anxiety." Dr. Sahgal noted that she first examined appellant on February 3, 2009, and had treated her on a regular basis (every one to three months) since then. Although she attributed appellant's diagnosed conditions to her employment, Dr. Sahgal did not provide an explanation. She also did not identify any specific period(s) of disability, either partial or total.

Dr. Sahgal's August 14, 2012 Form CA-20 is deficient for several reasons. First, the report does not specifically address the claimed period of disability beginning July 6, 2012. Second, Dr. Sahgal did not explain why she believed appellant's diagnosed conditions were employment related. The Board has consistently held that merely placing a mark in the "Yes"

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<sup>15</sup> 20 C.F.R. § 10.5(x).

box on question 8 (Form CA-20) will not suffice for purposes of establishing causal relationship.<sup>16</sup> Third, Dr. Sahgal noted that under no circumstance should appellant work with her current supervisor, which suggests a different, more recent cause for appellant's June/July 2012 work stoppage. Finally, none of the diagnosed conditions have been accepted under the current claim.

In an August 22, 2012 report, Dr. Rapoport again diagnosed chronic migraine headaches, with a June 11, 2012 date of onset. She noted that appellant was currently unable to work because her headaches were not under control. With respect to appellant's prognosis, Dr. Rapoport noted that there was severe stress at work that complicated the outcome of treatment. She anticipated a return to work on October 1, 2012. Again, Dr. Rapoport did not specifically address whether appellant's current disability was causally related to her March 11, 2008 employment injury. Moreover, her comment about severe stress at work complicating appellant's treatment suggests more recent events.

On July 29, 2013 OWCP properly advised appellant that the above-noted reports from Drs. Saad, Rapoport, and Sahgal were insufficient to establish her claimed disability during the period July 6 through September 28, 2012. OWCP provided appellant additional time to submit evidence in support of her claim.

In response, appellant submitted an August 7, 2013 attending physician's report (Form CA-20) from Dr. Rapoport. She noted a March 11, 2008 date of injury and a June 11, 2012 history of severe recurring migraines. Dr. Rapoport diagnosed PTSD and severe migraines. She further noted that appellant had been disabled from June 11 through September 28, 2012, and was able to resume regular work as of October 1, 2012. Dr. Rapoport answered "Yes" to question 8 (Form CA-20) indicating her belief that appellant's condition was caused or aggravated by an employment activity. However, she did not provide an explanation. In the "Remarks" section (No. 25), Dr. Rapoport noted that appellant "is feeling worse because of stress that she experiences at work." She did not elaborate on the work-related stress appellant reportedly "experiences." The Board finds that Dr. Rapoport failed to explain how appellant's disability during the claimed period was causally related to her March 11, 2008 employment injury. Also, PTSD is not an accepted condition under the current claim.

Appellant also provided an August 13, 2013 note from Dr. Rapoport, wherein she advised that, since October 2012, appellant suffered frequent, severe migraines exacerbated by stress. The Board notes that this latest submission from Dr. Rapoport does not address appellant's disability during the claimed period July 6 through September 28, 2012.

In light of the foregoing analysis, OWCP properly denied appellant's claimed recurrence of disability beginning July 6, 2012. The various reports from Drs. Saad, Rapoport, and Sahgal are insufficient to establish that appellant's work stoppage during the period July 6 through September 28, 2012 was causally related to her March 11, 2008 employment injury.

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<sup>16</sup> See *D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).



## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>17</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

## ANALYSIS -- ISSUE 2

OWCP received appellant's January 2, 2015 request for reconsideration on January 20, 2015. Appellant submitted the appeal request form that accompanied the November 6, 2014 merit decision. She did not specify the grounds for her request. Appellant merely checked the appropriate space on the form indicating reconsideration. The Board finds that appellant's January 2, 2015 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).<sup>22</sup>

Appellant also failed to submit any "relevant and pertinent new evidence" with her latest request for reconsideration. Although newly submitted, the May 2014 reports from Drs. Bernstein and Sahgal did not specifically address appellant's claimed disability during the period July 6 through September 28, 2012. Both physicians reported that appellant was currently being treated for at least one of her accepted conditions (generalized anxiety disorder). However, neither physician commented on whether she was disabled during the claimed period.

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<sup>17</sup> 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).

<sup>18</sup> 20 C.F.R. § 10.607 (2014).

<sup>19</sup> *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, *supra* note 8 at 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.

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

<sup>21</sup> *Id.* at §§ 10.607(b), 10.608(b).

<sup>22</sup> *Id.* at § 10.606(b)(2)(i) and (ii).

Consequently, the May 2014 reports from Drs. Bernstein and Sahgal are insufficient to warrant further merit 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).<sup>23</sup> Accordingly, OWCP properly declined to reopen appellant’s case under 5 U.S.C. § 8128(a).

**CONCLUSION**

The Board finds that appellant failed to establish a recurrence of disability beginning July 6, 2012, causally related to her March 11, 2008 employment injury. The Board further finds that OWCP properly denied appellant’s January 2, 2015 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2015 and November 6, 2014 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: September 18, 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

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<sup>23</sup> *Id.* at § 10.606(b)(2)(iii).