

ISSUE

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

On appeal counsel asserts that the May 25, 2016 decision was contrary to fact and law.

FACTUAL HISTORY

On May 10, 2013 appellant, then a 43-year-old senior officer specialist/correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2013 she had a stress reaction at work due to unfair treatment. She noted that she could not control her breathing, became numb, and could not talk due to the alleged unfair treatment. Appellant stopped work that day and returned on April 30, 2013.

Appellant's supervisor, A.G., controverted the claim. He indicated that on April 24, 2013 appellant was at a meeting with him and a union official when she became upset. After the meeting, she told them she needed to go to the emergency room. In a June 24, 2013 statement, A.G. advised that the April 24, 2013 meeting was held to discuss why appellant had been temporarily reassigned. He explained that appellant was moved due to a number of complaints lodged against her, and for concerns for her safety and security. A.G. noted that the temporary move was not disciplinary in nature and that appellant was placed back in her regular post on May 7, 2013.

In an undated statement, appellant alleged that she was treated in a disrespectful manner and ignored by employing establishment lieutenants and captains who mistreated her. She maintained that she was improperly removed from a position, denied union representation, and was generally treated unfairly on numerous occasions since her arrival at the employing establishment. Appellant indicated that this caused stress-related conditions including hyperventilation and problems with her neck, back, and extremities as well as headaches, dizziness, and confusion. She noted that she was filing an Equal Employment Opportunity (EEO) claim. Appellant submitted medical evidence including a July 8, 2013 report in which Dr. Warren W. Chin, an osteopath, advised that he had seen appellant several times for problems at work when she would become very agitated. Dr. Chin diagnosed a conversion-type reaction and advised that her workplace was a trigger for the anxiety symptoms.

By decision dated May 16, 2014 OWCP denied the claim finding that appellant had not established an injury in the performance of duty. Appellant timely requested a hearing with OWCP's Branch of Hearings and Review, held on December 16, 2014. Following her review of the record and hearing appellant's testimony, in a March 4, 2015 decision, the hearing representative affirmed the May 16, 2014 decision.

On February 29, 2016 appellant requested reconsideration. In an attached statement dated February 21, 2016, she asserted that she was placed in a hostile work environment and that her claim should be accepted because the employing establishment caused work-related stress.³

In a May 25, 2016 nonmerit decision, OWCP denied appellant's reconsideration request. It noted that she submitted no evidence other than her statement in which she reiterated her belief that she was wrongly treated by the employing establishment.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴ Section 10.608(a) of OWCP's regulations provides that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ Section 10.608(b) provides that when a request for reconsideration is timely filed, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

The only decision presently before the Board is the May 25, 2016 nonmerit decision of OWCP denying appellant's application for further merit review.

With her February 29, 2016 reconsideration request, appellant merely repeated her allegations that she was treated unfairly by the employing establishment. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does constitute a basis for reopening a case.⁸ She therefore did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under

³ Appellant's reconsideration request was followed by a reconsideration request by counsel on March 1, 2016. Counsel attached a copy of appellant's statement dated February 21, 2016.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *See L.R.*, Docket No. 15-1924 (issued September 27, 2016); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

section 10.606(b).⁹ As to the third above-noted requirement under section 10.606(b)(3), appellant submitted no additional evidence.

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, it properly denied her reconsideration request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ 20 C.F.R. § 10.606(b).