

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated October 7, 2014, the Board affirmed as modified a November 4, 2013 OWCP decision denying appellant's emotional condition claim.³ Although OWCP had found the claim untimely, the Board found that appellant was last exposed to factors of her federal employment on November 4, 2010, the date she stopped work and she filed her claim on September 30, 2013, within three years of her last exposure to the implicated employment factors. The Board further found, however, that she had failed to submit a detailed statement describing the work factors she believed caused her emotional condition, and thus failed to establish an essential element of her claim. The facts and circumstances as set forth in the Board's prior decision are hereby incorporated by reference.

On October 5, 2015 appellant, through her representative, requested reconsideration of the October 7, 2014 decision. Appellant's representative submitted a November 22, 2013 factual statement and supporting medical evidence dated September 12, 2013 and September 8, 2015. He contended that appellant had established a compensable work factor as her condition arose from the performance of her regular work duties. Appellant's representative also asserted that the medical evidence of record was sufficient to establish an emotional condition as a result of these factors.

In a statement dated November 22, 2013, appellant advised that she experienced increased symptoms of PTSD as a result of her employment. She related that the employing establishment reassigned her to a position that required "working with new peers, rotating shifts, different workstations, new supervisors and new management styles." Appellant maintained that she believed that she would be fired because she could not adequately perform her assigned duties. She related, "With each patient, I continually and constantly thought that if I forgot one detail required of a procedure that I was required to perform, it would result in dire consequences for the patient. In addition, I was in constant fear that I would make an error on required written reports or forget to notate an important fact or detail." Appellant additionally contended that management assigned her work outside of her physical and mental capacity.

Appellant submitted September 12, 2013 and September 8, 2015 medical reports in support of her request for reconsideration.

By decision dated December 8, 2015, OWCP denied appellant's request for reconsideration as she had not submitted evidence or raised an argument sufficient to warrant reopening the case for further merit review under section 8128(a). It noted that the November 22, 2013 statement had been in the record prior to the Board's issuance of its

³ Docket No. 14-0793 (issued October 7, 2014). On September 30, 2013 appellant, then a 66-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained post-traumatic stress disorder (PTSD) causally related to factors of her federal employment.

October 7, 2014 decision. OWCP thus found that the Board had already considered the statement in its October 7, 2014 decision. It further determined that the medical evidence submitted was not relevant to the underlying issue of whether appellant had submitted a detailed statement describing the work factors to which she attributed her condition.

On appeal appellant's representative argues that the Board did not consider appellant's November 22, 2013 statement in its prior decision as it denied her claim finding that she had not submitted factual evidence describing the implicated work factors. He contends that the case should be remanded for OWCP to review the merits of the claim.

LEGAL PRECEDENT

FECA provides that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.⁴ Section 10.607(a) of OWCP's regulations requires that an application for reconsideration must be received within one year of the date of OWCP's merit decision from which review is sought.⁵ If a request for reconsideration is timely, OWCP will reopen a case for merit review under section 8128(a) of FECA if the claimant: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his burden of proof.⁸ The requirements pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.⁹ If OWCP should determine that the new evidence submitted lacks substantive, probative, value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.¹⁰

⁴ 5 U.S.C. 8128(a).

⁵ 20 C.F.R. § 10.607(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *See J.W.*, Docket No. 14-1011 (issued March 25, 2016); *Donald T. Pippin*, 53 ECAB 631 (2003).

⁹ *Id.*

¹⁰ *See Annette Louise*, 53 ECAB 783 (2003); *M.R.*, Docket No. 14-0966 (issued August 22, 2014).

ANALYSIS

On prior appeal, by decision dated October 7, 2014, the Board affirmed as modified a November 4, 2013 decision denying appellant's emotional condition claim. It found that she had timely filed her emotional condition claim but affirmed the denial of the claim as she had failed to submit a detailed factual statement describing the implicated work factors. Appellant requested reconsideration. By decision dated December 8, 2015, OWCP denied a review of the merits of her claim because she had submitted no pertinent and new relevant evidence. It believed that the November 22, 2013 statement had already been reviewed by the Board in its October 7, 2014 decision.

In order to require merit review, it is not necessary that the new evidence be sufficient to discharge appellant's burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.¹¹ In her November 22, 2013 statement, appellant described in detail the employment factors to which she attributed her condition, and thus provided evidence pertaining directly to the underlying issue of whether she submitted factual evidence in support of her claim. Contrary to OWCP's finding, the Board did not consider the November 22, 2013 statement in its October 7, 2014 decision as its jurisdiction is limited to reviewing evidence that was before OWCP at the time of its final decision.¹²

As appellant's November 22, 2013 statement constituted pertinent and relevant new evidence, the Board finds that OWCP improperly denied her request for review of the merits of her claim.¹³ The case will be remanded to OWCP to conduct an appropriate merit review of the claim. Following this and such other development as deemed necessary, OWCP shall issue a merit decision on the claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ See *Donald T. Pippin*, *supra* note 8.

¹² 20 C.F.R. § 501.2(c)(1).

¹³ See *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board