

FACTUAL HISTORY

On March 17, 2010 appellant, then a 56-year-old custodial worker, filed an occupational disease claim (Form CA-2) alleging that her federal employment had aggravated her post-traumatic stress disorder (PTSD). She referred to a December 9, 2008 incident and asserted that she was inappropriately asked to clean up an area that was the location of a gunshot suicide, and then after being diagnosed with PTSD was not accommodated. On the claim form, appellant acknowledged that at the time of the December 9, 2008 incident she was employed by a private contractor. She identified the date of injury as March 1, 2009.

By letter dated April 27, 2010, counsel indicated that in December 2008 appellant worked for a private contractor, but subsequently became a federal employee and continued to work in the same position in the same work area. He alleged that in March 2009 appellant was transferred to the night shift where she worked alone and her PTSD symptoms worsened. The employing establishment submitted a May 20, 2010 letter from a program manager indicating that in December 2000 appellant was a contractor employee, and when she returned to work as a temporary federal employee, accommodations were made for her medical condition. The manager indicated that appellant was detailed to work away off-site from the main area and worked under a new manager.

OWCP initially accepted the claim on August 24, 2010 for aggravation of PTSD. In a letter dated June 27, 2011, an employing establishment program manager argued that the acceptance should be rescinded. The manager indicated that the suicide incident described by appellant occurred on December 9, 2008, when appellant was not a federal employee, and appellant had sought compensation benefits through the private employer. According to the program manager, appellant was hired as a temporary federal worker on February 17, 2009, not to extend beyond March 16, 2010. The employing establishment program manager further indicated that the medical restrictions were accommodated, as appellant was provided work four miles from the site of the December 9, 2008 incident, and did not have exposure to conditions that might be perceived as emotionally distressing.

By decision dated July 5, 2011, OWCP rescinded acceptance of the claim. It found that the evidence of record showed that appellant had been adequately accommodated for the medical condition she sustained as a federal contractor, when she returned to work as a temporary federal employee.

In a letter dated July 5, 2011, OWCP requested that appellant submit additional evidence to establish her claim for compensation. Appellant was afforded 30 days to respond to the employing establishment comments regarding reasonable accommodation, and to submit further evidence or argument that her injury occurred in the performance of duty.

The record contains a memorandum of telephone call (Form CA-110) dated August 4, 2014 indicating that appellant was upset that OWCP had not issued a final decision as to her claim for compensation.

By merit decision dated September 8, 2014, OWCP denied appellant's claim for compensation. It found the employing establishment had accommodated appellant's medical

condition and the evidence of record did not establish any compensable work factors with respect to the claim for compensation.

On July 6, 2015 appellant submitted a June 29, 2015 letter requesting reconsideration. She asserted that her claim was not properly investigated. Appellant noted that she had no new evidence, but she was on medication for PTSD and felt that she had submitted sufficient evidence to establish her claim.

By decision dated October 22, 2015, OWCP denied further review of the merits of the claim. It found that the reconsideration request was not sufficient to require a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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."⁴ 20 C.F.R. § 10.608(b) states 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.⁵

ANALYSIS

In the present case, on September 8, 2014 OWCP denied the claim for aggravation of PTSD, finding that appellant had not established a compensable work factor. It found that the December 9, 2008 incident occurred before appellant was a federal employee, and she had not established a compensable work factor with respect to an allegation that the employing establishment had failed to properly accommodate any work restrictions. To require OWCP to review the merits of the claim, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(3).

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant 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. She did not discuss a specific point of law, and as to argument she provided a brief allegation that her claim was not properly investigated. Appellant did not provide further explanation or advance a new and relevant legal argument.

³ 5 U.S.C. § 8128(a) (providing that "[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").

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

As to evidence, appellant did not submit any pertinent new and relevant evidence. She indicated only that she felt the previously submitted evidence was sufficient. For the reasons discussed, the Board finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to review the merits of the claim for compensation.

On appeal, appellant argues that she has three physicians who have diagnosed PTSD as a result of a traumatic incident in 2008. As indicated above, the Board does not have jurisdiction over the merits of the claim for compensation. The issue was whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), and the Board has found OWCP properly denied merit review in this case.

CONCLUSION

The Board finds OWCP properly denied appellant's request for reconsideration without merit review of the claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2015 is affirmed.

Issued: October 19, 2016
Washington, DC

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

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

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