

harassment by management regarding her *Weingarten Rights*. She also alleged harassment and intimidation by management continued thereafter from October 31 to November 6, 2012. On the reverse side of the claim form, the employing establishment attributed appellant's stress reaction to a corrective action meeting. Appellant stopped work on November 7, 2012.

In a November 15, 2012 Family and Medical Leave Act (FMLA) form, Dr. Richard Gilbert, a Board-certified family medicine osteopath, noted that appellant was harassed by her supervisor at work on October 29, 2012.

On a November 15, 2012 attending physician's report (Form CA-20), Dr. Gilbert related an injury date of October 29, 2012 and diagnosed post-traumatic stress disorder (PTSD). He noted that appellant had been harassed at work by her supervisor.

By letter dated November 26, 2012, OWCP advised appellant of the five basic elements necessary to establish a claim under FECA. It further explained that the evidence of record was factually and medically insufficient to establish her claim. OWCP provided a claim development questionnaire that appellant was to complete and return. It requested that she describe in detail the employment-related activities she believed contributed to her condition, including information regarding the frequency and duration of various implicated events. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence in support of her claimed injury.

Dr. Gilbert, in reports dated November 19 and December 14, 2012, diagnosed PTSD, depression, generalized anxiety disorder, and harassment at work.

On December 28, 2012 OWCP received a statement from union steward J.R. noting that appellant requested a union steward following a request by supervisor T.R. to meet regarding a disciplinary matter. When appellant refused, supervisor T.R. instructed her to clock out and go home, and then proceeded to yell at appellant.

Appellant submitted statements in which she described invoking her *Weingarten Rights* when supervisor T.R. requested to meet with her. She also submitted witness statements regarding the alleged incident. OWCP also received additional medical evidence addressing her emotional condition.

By decision dated May 14, 2013, OWCP denied appellant's claim as she had failed to establish any compensable factor of employment as a cause of her emotional condition. As no compensable employment factor had been established, it did not address the medical evidence.

In a letter received by OWCP on May 14, 2014 appellant, through her representative, requested reconsideration. In support of her request, appellant resubmitted her statement, as well as additional witness statements regarding alleged harassment by the employment establishment. She also submitted a January 2008 posting on workplace violence/zero tolerance policy, pay slips, earnings and leave statements, copies of the Form CA-1 she filed, a police report, and copies of grievances.

By decision dated August 13, 2014, OWCP denied modification of its May 14, 2013 decision. It found the evidence of record was insufficient to establish any compensable work factors.

In reports dated September 2 and December 12, 2014, and March 13, 2015, Dr. Gilbert diagnosed a variety of conditions including PTSD, target of perceived adverse discrimination and persecution, generalized anxiety disorder, and depression.

On August 13, 2015 appellant again requested reconsideration and submitted policy statements from the employing establishment regarding harassment and how to recognize workplace harassment.

By decision dated November 10, 2015, OWCP denied modification of its prior decision, finding that the evidence submitted was insufficient to support her allegation that she had been harassed as defined under FECA.

OWCP received medical reports from Dr. Gilbert dated December 27, 2015 and March 21, 2014 diagnosing PTSD and generalized anxiety disorder.

On October 27, 2016 appellant again requested reconsideration. In support of her request, appellant submitted postal union articles entitled “Top ten management violations,” NALC injury compensation CD,” Challenging management’s OWCP mistakes helps carriers and NALC,” and Management violations of the FECA are grievable.”

By decision dated January 12, 2017, OWCP denied appellant’s request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² 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.³ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant’s application for review must be received by OWCP within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards,

² 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

³ 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ *Id.* at 10.607(a).

OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered.

The underlying issue in this case is whether appellant submitted sufficient evidence to establish any compensable employment factors. A claimant may also be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered. Appellant submitted articles from the postal union concerning management errors, FECA, and OWCP. The Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value as such materials are of general application and are not determinative the particular employment factors alleged by the employee.⁶ Therefore, these articles do not constitute relevant and pertinent new evidence.⁷

OWCP also received additional medical reports following the last merit decision in this case. The underlying issue is whether appellant has established that the alleged harassment by her supervisor constituted a compensable factor of employment. These medical documents are irrelevant to the factual question of harassment.⁸ Therefore, as noted above, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹

Appellant's statement in support of reconsideration did not establish legal error on a specific point of law or advance a relevant legal argument not previously considered. Furthermore, appellant also failed to submit any relevant or pertinent new evidence not previously considered. The Board accordingly finds that 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, OWCP properly denied merit review.

⁵ *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁶ See *C.J.*, Docket No. 12-0671 (issued October 4, 2012); see also *Y.S.*, Docket No.08-467 (issued July 1, 2008); *George A. Johnson*, 43 ECAB 712 (1992).

⁷ See *C.J.*, *id.*

⁸ See *J.M.*, Docket No. 16-1575 (issued May 25, 2017).

⁹ *Id.*; see also *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

CONCLUSION

The Board finds OWCP properly denied appellant's request for reconsideration of the merits of her 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 January 12, 2017 is affirmed.

Issued: December 18, 2017
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