

**United States Department of Labor
Employees' Compensation Appeals Board**

Y.C., Appellant)	
)	
and)	Docket No. 17-1212
)	Issued: April 11, 2018
DEPARTMENT OF VETERANS AFFAIRS,)	
EAST ORANGE CAMPUS, East Orange, NJ,)	
Employer)	
)	

Appearances:
James D. Muirhead, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 11, 2017 appellant, through counsel, filed a timely appeal from a January 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated December 17, 2015, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On February 18, 2014 appellant, then a 36-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2014 she sustained several stress-related conditions.³ She indicated that, when she entered a patient's room to administer medication, the patient looked at her and stated, "You again." Appellant asserted that she felt unsafe, noting that she had experienced a prior incident with that patient on January 3, 2013 when he punched her in her face and kicked her in her chest. She stopped work on February 18, 2014.⁴

In a February 25, 2014 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident(s) caused or aggravated a medical condition. It requested that appellant complete and return an attached questionnaire which posed various questions regarding the January 3, 2013 and February 14, 2014 work incidents.

Appellant submitted a narrative statement in response to the February 25, 2014 development letter in which she provided additional details regarding the January 3, 2013 and February 14, 2014 incidents. She indicated that on January 3, 2013 she introduced herself to a patient and that, seemingly without any reason, he punched her in the face and pushed her against the wall. The patient then kicked her in the chest and she was thrown towards the door by the force of the kick. He also bit his lip, causing it to bleed, and spit at her. Appellant indicated that she felt she was in danger because the patient had an infectious disease. She noted that on February 14, 2014 she entered the room of the same patient and she felt threatened when he said, "You again for more?" Appellant believed that the patient's comment was a reference to the January 3, 2013 attack. She noted that the patient tried to get up from his bed and that she ran from the room.

Appellant submitted a March 5, 2014 attending physician's report (Form CA-20) in which Dr. Carla C. Hammond, an attending Board-certified psychiatrist, listed the date of injury as February 14, 2014 and the history of injury as being threatened by a veteran. Dr. Hammond diagnosed major depressive disorder (single episode) and post-traumatic stress disorder, and checked a box marked "Yes" to indicate that the conditions were caused or aggravated by an employment activity. She added the notation, "Threatened by a veteran that assaulted her one year ago."

In a March 31, 2014 decision, OWCP denied appellant's claim for a stress-related condition due to factors of her federal employment. It accepted two employment factors -- the

³ Appellant indicated that she sustained mental abuse, shortness of breath, headache, and panic attacks.

⁴ On the reverse side of the Form CA-2 appellant's immediate supervisor indicated that appellant was in the performance of duty at the time of the February 14, 2014 incident.

January 3, 2013 incident when the patient attacked appellant and the February 14, 2014 incident when appellant felt threatened by the same patient's comment, "You again for more?" However, OWCP denied appellant's claim because she failed to submit medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted employment factors.

On April 23, 2014 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional evidence in support of her reconsideration request. In a February 28, 2018 report, Dr. Hammond indicated that appellant had been attending an outpatient treatment program at the Princeton House since February 27, 2014.⁵ She noted that, given appellant's experience with a patient on two occasions, it would be beneficial for her to be transferred to another work unit. Dr. Hammond posited that being in the same environment with the patient would trigger appellant's symptoms of post-traumatic stress syndrome.

In March 6 and 13, 2017 reports, Dr. Hammond discussed appellant's reported feelings of anxiety regarding her "recent trauma" and the thought of returning to the workplace where it occurred. She diagnosed post-traumatic stress disorder and major depressive disorder (single episode, severe degree) without mention of psychotic behavior.

In an April 23, 2014 report, Dr. Hammond indicated that, during an interview on February 26, 2014, appellant clearly displayed symptoms of trauma and retraumatization directly related to being punched in the face and kicked in the chest by a veteran in January 2013. Appellant reported that the same veteran threatened to assault her again on February 14, 2014. Dr. Hammond indicated that, as a response to this threat, she began having acute symptoms of shortness of breath, panic symptoms, and flashbacks to the January 2013 incident. Appellant also reported experiencing poor sleep and nightmares about the veteran assaulting her and she asserted that she was unable to return to work due to fear of being harmed again by the veteran. Dr. Hammond further discussed the course of appellant's treatment at the Princeton House.

Appellant also submitted various handwritten notes of clinical assessment sessions in February and March 2014 with Dr. Hammond and Ms. Bhatt.

In a November 4, 2014 decision, OWCP's hearing representative affirmed OWCP's March 31, 2014 decision. She determined that appellant failed to submit rationalized medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted January 3, 2013 and February 14, 2014 employment factors.

On December 23, 2014 appellant, through counsel, requested reconsideration of the November 4, 2014 decision. In a December 16, 2014 letter, counsel argued that the medical evidence of record, including Dr. Hammond's April 23, 2014 report, established appellant's claim. Appellant resubmitted a copy of Dr. Hammond's April 23, 2014 report.

⁵ The report was signed by Dr. Hammond and Meera Bhatt, an attending licensed professional counselor.

By decision dated December 17, 2015, OWCP denied modification of its November 4, 2014 decision, noting that the medical evidence submitted by appellant did not contain adequate medical rationale with respect to causal relationship.

On December 7, 2016 appellant, through counsel, requested reconsideration of OWCP's December 17, 2015 decision. Counsel argued that an enclosed December 7, 2016 statement of appellant and Dr. Hammond's April 23, 2014 report established appellant's claim.

In her December 7, 2016 statement, appellant indicated that, on January 3, 2013, she was assaulted by a patient at work and that on February 14, 2014 she was threatened by the same patient. She indicated that the patient who assaulted her and spit at her on January 3, 2013 was HIV positive. As a result of the February 14, 2014 incident, appellant went into therapy for three months at the Princeton House. She noted that she felt that Dr. Hammond's April 23, 2014 report was accurate and supported her claim. Appellant indicated that she had been diagnosed as having short-term memory loss, difficulty with concentration, and postconcussion syndrome by another attending physician on January 9, 2013.

Appellant also resubmitted a copy of the April 23, 2014 report of Dr. Hammond, which OWCP had previously considered.

By decision dated January 19, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence and argument appellant submitted in support of her timely reconsideration request was duplicative or irrelevant/immaterial to the underlying issue of her case.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.⁶

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (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.⁷ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ For OWCP decisions issued on or after August 29, 2011, the date of the request for reconsideration is the "received date" as recorded in the Integrated Federal Employees' Compensation System (iFECS).¹¹ If the last day of the one-year time period is a Saturday, Sunday, or a legal holiday, OWCP will still consider a request to be timely filed if it is received on the next business day.¹²

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

ANALYSIS

OWCP issued a decision on December 17, 2015, and it received appellant's request for reconsideration on December 7, 2016. Her request was timely filed as it was received within one year of OWCP's December 17, 2015 decision.¹⁵ The issue presented on appeal is whether appellant's December 7, 2016 request for reconsideration met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim.

The Board finds that appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP.

Accompanying her reconsideration request, appellant submitted a December 7, 2016 statement in which she asserted that an April 23, 2014 medical report of Dr. Hammond and other medical evidence supported a finding that she sustained a stress-related condition due to the accepted January 3, 2013 and February 14, 2014 employment incidents. The Board notes that the underlying issue in this case is whether appellant submitted rationalized medical evidence sufficient to meet her burden of proof to establish injury causally related to the accepted January 3,

¹⁰ *Id.* at § 10.607(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). *See also C.B.*, Docket No. 13-1732 (issued January 28, 2014). For decisions issued before June 1, 1987, there is no regulatory time limit for when reconsideration requests must be received. For decisions issued from June 1, 1987 through August 28, 2011, the one-year time period begins on the next day after the date of the original decision and must be mailed within one year of OWCP's decision for which review is sought.

¹² *Id.* at Chapter 2.1602.4. *See also M.A.*, Docket No. 13-1783 (issued January 2, 2014).

¹³ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁴ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁵ *See supra* notes 10 through 12.

2013 and February 14, 2014 employment incidents,¹⁶ and this is a medical issue which must be addressed by relevant medical evidence.¹⁷ A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, however, the Board finds that appellant did not submit any such evidence in this case.

The Board notes that the content of appellant's December 7, 2016 statement is irrelevant to the underlying issue of this case. Appellant's own opinion relative to causal relationship would have no bearing on the underlying issue of the case which is medical in nature and must be addressed by relevant medical evidence.¹⁸ Her submission of this argument does not require reopening of her claim for merit review as the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁹

Appellant also resubmitted a copy of Dr. Hammond's April 23, 2014 report which OWCP had previously considered and found insufficient to establish her claim. Her submission of this evidence would not require reopening of her claim for merit review as the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.²⁰

On appeal counsel argues that OWCP's January 19, 2017 decision denying appellant's request for reconsideration of the merits of her claim should be reversed. However, he has not provided adequate support for this argument and the Board has explained why appellant is not entitled to such a merit review of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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).

¹⁶ OWCP has accepted two employment factors -- the January 3, 2013 incident when the patient attacked appellant and the February 14, 2014 incident when appellant felt threatened by the same patient's comment, "You again for more?" However, OWCP found in its decisions, including its December 17, 2015 decision, that the medical evidence submitted by appellant did not contain adequate medical rationale with respect to causal relationship.

¹⁷ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁸ In her December 7, 2016 statement, appellant further discussed the January 3, 2013 and February 14, 2014 employment incidents. However, this factual discussion is not relevant to the underlying issue of the present case which is medical in nature.

¹⁹ See *supra* note 14.

²⁰ See *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2018
Washington, DC

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

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

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