

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

V.P., Appellant	)	
	)	
and	)	<b>Docket No. 18-0440</b>
	)	<b>Issued: August 24, 2018</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>BROOKLYN SOCIAL SECURITY CARD</b>	)	
<b>CENTER, Brooklyn, NY, Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 27, 2017 appellant filed a timely appeal from a December 5, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated December 22, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction over the merits of the claim.<sup>2</sup>

**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).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion the Board, by order dated April 20, 2018, denied her request noting that her arguments on appeal could be adequately addressed in a Board decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0440 (issued April 20, 2018).

## **FACTUAL HISTORY**

On May 27, 2016 appellant, then a 64-year-old service representative, filed a traumatic injury claim (Form CA-1) alleging that she developed post-traumatic stress disorder (PTSD) on April 18, 2016 while in the performance of duty. In an April 18, 2016 statement, she described the events of April 18, 2016 regarding her difficulties with a customer. Appellant noted that the customer requested a letter immediately, and responded aggressively when she informed him that she would mail a letter to him. The customer stared at the cross appellant was wearing and accused appellant of being a racist. Appellant immediately pulled down the shade and rang for the guard. When the guard did not appear, she rang the panic button for the first time in her 30-year career. Appellant felt threatened not only by the customer's words, but also his tone. Her supervisor, L.Z. responded to appellant's use of the panic button by reprimanding her. Appellant noted that she experienced a two-hour period of stupor during which time she was shaking and fearful.

Appellant submitted a treatment note dated April 28, 2016 from Dr. Paul W. Marvel, an internist, indicating that he treated appellant for anxiety related to a work incident on April 18, 2016.

The employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16). Dr. Marvel completed this form on May 20, 2016 and indicated that appellant was verbally abused and felt threatened by a customer while at work. He diagnosed anxiety and indicated by checking a box marked "yes" that appellant's condition was caused or aggravated by the employment activity described.

In a July 1, 2016 development letter, OWCP requested that appellant provide additional factual and medical evidence in support of her traumatic emotional condition claim. It afforded her 30 days for a response. Dr. Marvel completed notes on May 5, June 9, and July 8, 2016 and diagnosed continuing anxiety episodes with feelings of anger.

Appellant provided a narrative statement describing the events of April 18, 2016. She noted that a male customer requested a social security card, but did not have the appropriate documentation. When appellant informed him that he could not have his card, he repeatedly slammed the window ledge with his hand. The customer also put his head as close as he could to the glass and shouted at appellant. Appellant was frightened by his actions. The customer left momentarily, but quickly returned to appellant's window and informed appellant that the guard had told him that he should get a receipt. Appellant disagreed that the receipt was appropriate. The customer then screamed at appellant and noticing her cross necklace, shouted that she was a racist. Appellant telephoned the guard for assistance. The guard did not appear and the customer continued to scream. Appellant then pushed the panic button and the guard came to her assistance. The guard directed the customer to calm down, but he continued to scream. Appellant's supervisor, L.Z., appeared after five minutes, instructed the customer to calm down, and the guard escorted him out. L.Z. asked why appellant did not call right away and instructed her to take a break.

By decision dated August 4, 2016, OWCP accepted that the April 18, 2016 event was a compensable factor of employment, but denied appellant's claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition of anxiety and the April 18, 2016 employment factor.

Appellant requested an oral hearing before an OWCP hearing representative on August 19, 2016. She also provided additional evidence. Appellant provided notes dated July 29 and August 18, 2016 from Dr. Maravel again diagnosing episodes of anxiety and anger to the work-related incident. She also provided a note dated August 31, 2016, from Kenneth Redden, a licensed clinical social worker, who diagnosed disability, trauma, and anxiety.<sup>3</sup>

Appellant testified at the oral hearing before OWCP's hearing representative on November 16, 2016. She noted that she had returned to full duty. In a note dated December 22, 2016, Dr. Nabil Rezk, a psychiatrist, diagnosed major depressive disorder.

By decision dated December 22, 2016, OWCP's hearing representative denied appellant's claim, finding that she failed to submit medical opinion evidence establishing causal relationship between her diagnosed emotional conditions and the April 18, 2016 work incident from an appropriate physician.

Appellant provided additional medical evidence including a February 7, 2017 note from Dr. Maravel diagnosing anxiety and depression and indicating that appellant did not have a history of anxiety or depression prior to her work-related incident on April 18, 2016. Progress notes from Dr. Rezk were received which indicated that he had examined appellant on November 22, 2016, January 5 and 26, February 16, and March 16, 2017. Appellant also resubmitted the December 22, 2016 note from Dr. Rezk.

On September 11, 2017 appellant requested reconsideration.

By decision dated December 5, 2017, OWCP denied appellant's request for reconsideration. It noted that as Dr. Maravel was not a psychologist, nor a psychiatrist his opinion could not establish whether appellant's emotional condition was causally related to the work incident.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</sup> One such limitation is that to be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> To require OWCP to reopen

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<sup>3</sup> Social workers are not considered physicians as defined under FECA; therefore, their opinions are of no probative value. The Board has held that medical evidence must be from a qualified physician, and that a social worker is not a physician as defined under FECA such that an opinion from a social worker is of no probative medical value. *See* 5 U.S.C. § 8101(2) (defines the term physician); *R.W.*, Docket No. 17-1542 (issued February 1, 2018); *David P. Sawchuck*, 57 ECAB 316, 320 n.11 (2006).

<sup>4</sup> This section provides in pertinent part: the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> *Id.* at § 10.607(a).

a case for merit review under section 8128(a) of FECA,<sup>7</sup> OWCP's regulations provide that the evidence or argument submitted by 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.<sup>8</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>9</sup>

The submission of evidence which repeats or duplicates evidence already in the case record<sup>10</sup> and that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim.

OWCP issued a decision on December 22, 2016 denying appellant's claim as she failed to submit medical opinion evidence establishing a causal relationship between her diagnosed emotional conditions and the accepted April 18, 2016 work incident. The underlying issue is therefore causal relationship.

In her September 11, 2017 request for reconsideration, 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. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

In support of her September 11, 2017 reconsideration request, appellant resubmitted the submitted series of notes from Dr. Rezk, a psychiatrist, indicating that he examined appellant on November 22, 2016, January 5 and 26, February 16, and March 16, 2017. While Dr. Rezk practices as a psychiatrist, he did not provide medical evidence which was relevant or pertinent to the issue on reconsideration, which was whether appellant had established a causal relationship between her diagnosed emotional condition of major depressive disorder and her April 18, 2016 employment incident. 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.<sup>12</sup>

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<sup>7</sup> 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>8</sup> 20 C.F.R. § 10.606(b)(3).

<sup>9</sup> *Id.* at § 10.608(b).

<sup>10</sup> *T.H.*, Docket Nos. 17-1578 & 17-1651 (issued April 26, 2018); *M.D.*, Docket No. 17-1250 (issued April 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>11</sup> *T.H., M.D., id.*; *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>12</sup> *Id.*

Appellant also resubmitted the December 22, 2016 note from Dr. Rezk which is largely cumulative of his prior reports. The Board has held that newly submitted evidence which is repetitive or duplicative of evidence existing in the record is insufficient to warrant further merit review.<sup>13</sup> Therefore this report does not constitute a basis to reopen appellant's case for review of the merits.

Finally, appellant submitted a February 7, 2017 note from Dr. Maravel diagnosing anxiety and depression and indicating that appellant did not have a history of anxiety or depression prior to her work-related incident on April 18, 2016. This opinion is substantially similar to, and cumulative of the opinions he offered in his previous reports, and still does not explain how appellant's April 18, 2016 employment incident caused the diagnosed conditions.<sup>14</sup> The Board finds therefore that Dr. Maravel's February 7, 2017 note was not relevant and pertinent new evidence to the basis of the denial of her emotional condition claim. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence and thus, she failed to satisfy the third requirement under section 10.606(b)(3).

The Board accordingly finds that appellant was not entitled to a merit review of the claim. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.606(b)(3), OWCP properly denied merit review.<sup>15</sup>

### 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).

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<sup>13</sup> *T.H., M.D., supra* note 10; *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>14</sup> *See N.M.*, Docket No. 18-0354 (issued July 2, 2018).

<sup>15</sup> OWCP had already considered the reports of Dr. Maravel and determined that they were insufficient to establish appellant's claim for an April 18, 2016 employment injury. Although the Board does not have jurisdiction over the merits of appellant's claim, it should be noted that appellant submitted a Form CA-16 completed by Dr. Maravel on May 20, 2016. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See N.B.*, Docket No. 17-0927 (issued April 18, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2018  
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