

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 May 4, 2015 appellant, then a 55-year-old revenue agent, filed a traumatic injury claim (Form CA-1) alleging that she experienced severe depression, high blood pressure, and anxiety and panic on April 2, 2015. She attributed her condition to a manager's abuse and retaliation after she experienced a left shoulder injury and the failure of the employing establishment to provide reasonable accommodation for her difficulty breathing. Appellant stopped work on April 12, 2015.

S.B., a supervisor, related that appellant had requested that her workload review be rescheduled so that she could see a nurse due to stress. She told appellant that if she remained at work the review would proceed, noting that she had already granted appellant's request for prior postponements. S.B. advised that the employing establishment accommodated appellant's shoulder injury.³

In a statement dated April 24, 2015, A.N., a coworker, related that on April 2, 2015 appellant had "a meltdown from all the stress that [S.B.] had put [her] under."⁴ She accompanied appellant to the union office about a scheduled review, but she was too upset to articulate what was happening. A.N. drove her to see a physician.

By decision dated June 19, 2015, OWCP denied appellant's emotional condition claim. It found that she had not provided a detailed statement identifying the work factors to which she attributed her condition or supported her contentions with corroborating evidence, and thus had failed to factually establish her claim.⁵

Appellant, on July 7, 2015, requested a telephone hearing before an OWCP hearing representative. During the telephone hearing, held on March 11, 2016, counsel asserted that management retaliated against her after a shoulder injury. Appellant described actions by her supervisor that she believed were inappropriate, including lowering her performance evaluation and denying her request to telework due to episodes of vertigo. She asserted that she had filed a grievance which was resolved in her favor.⁶

³ In an undated statement received June 9, 2015, the employing establishment indicated that it was unaware that appellant had any difficulty breathing.

⁴ In a statement dated April 24, 2015, V.H., a coworker, related that appellant was crying and upset on April 2, 2015. She advised that she became unwell after any contact with her supervisor, and that it had begun after her shoulder injury in July 2012.

⁵ OWCP also noted that appellant had not submitted any medical evidence from a physician supporting her claim.

⁶ The employing establishment submitted a statement on April 11, 2016 commenting on the hearing.

In a decision dated May 20, 2016, OWCP's hearing representative affirmed the June 19, 2015 decision. She found that appellant had not established any compensable factors of employment.

On May 4, 2017 appellant, through counsel, requested reconsideration. Counsel submitted the April 24, 2015 statement from A.N. in support of the request, which he maintained OWCP had not previously considered.

By decision dated August 1, 2017, OWCP denied appellant's request for reconsideration as she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further review of the merits under section 8128(a). It noted that it had previously considered the April 24, 2015 witness statement from A.N.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁷ 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.⁸ 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 within one year of the date of that decision.⁹ 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.¹⁰

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS

OWCP denied appellant's emotional condition by decision dated May 20, 2016. On May 4, 2017 appellant timely requested reconsideration. The Board finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁷ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides 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."

⁸ 20 C.F.R. § 10.606(b)(3).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

¹² *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP.¹³ Additionally, she has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether appellant has established a compensable employment factor. In support of her request for reconsideration, appellant resubmitted an April 24, 2015 witness statement from A.N. Evidence which is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.¹⁴

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 submit pertinent new and relevant evidence not previously considered. The Board accordingly finds that she has not met the requirements of 20 C.F.R. § 10.606(b)(3). Accordingly, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁵

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).

¹³ See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹⁴ See *D.G.*, Docket No. 17-1251 (issued October 23, 2017); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁵ See *D.G.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 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