

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 19, 2016 appellant, then a 52-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained a work-related aggravation of depression, anxiety, and insomnia. She asserted that an acting administrative officer threatened her and requested that she leave the palliative care unit where she was working. Appellant indicated that she first became aware of her claimed condition and its relationship to her federal employment on February 1, 2016. She stopped work on February 1, 2016. On the reverse of the form, appellant's immediate supervisor indicated that she could not vouch for appellant's claim that she was threatened.

In a February 25, 2016 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. On February 25, 2016 it also requested that the employing establishment submit additional information.

Appellant submitted an undated statement in which she discussed the incidents and conditions at work that she believed caused her to sustain several stress-related conditions. She asserted that the acting administrative officer subjected her to abuse, bullied her, and did not treat her with respect. Appellant claimed that on January 28, 2016 the acting administrative officer improperly met with her without allowing her to have her union representative present at the meeting. She indicated that management acted improperly by assigning her to the palliative care unit and noted that she had filed an Equal Employment Opportunity claim as a result of this action. Appellant asserted that there was confusion about who her first line and second line supervisors were, and she claimed that management failed to adequately define her work duties and responsibilities. She alleged that she did not receive performance evaluations in 2015 and 2016.

Appellant submitted several January 2016 e-mails to and from employing establishment officials which discussed the ending of her work detail.

Appellant submitted reports of attending physicians dated between February and April 2016, including reports of Dr. Sara Vizcay, an attending Board-certified family practitioner. Dr. Vizcay diagnosed such conditions as major depressive disorder, general anxiety, acute stress disorder, adjustment insomnia, and post-traumatic stress disorder secondary to her work environment.

In response to the February 25, 2016 development letter, a human resources specialist from the employing establishment indicated that she was submitting a February 1, 2016 report of contact from the acting administrative officer and a February 23, 2016 incident report from appellant's immediate supervisor.³ In the February 1, 2016 report of contact, the acting administrative officer

³ The February 23, 2016 incident report was also signed by a safety officer from the employing establishment on March 1, 2016.

indicated that she began to speak to appellant on February 1, 2016 about her need to vacate an office due to the termination of her work detail to that office. She noted that appellant kept interrupting her efforts to speak on this matter and that she advised appellant that she was being insubordinate and disrespectful. In the February 23, 2016 incident report, appellant's immediate supervisor indicated that she had been advised that on February 1, 2016 the acting administrative officer told appellant to leave her work detail in the palliative care unit because it had ended.

By decision dated August 1, 2016, OWCP denied appellant's claim for stress-related conditions because she failed to establish any compensable employment factors. It determined that appellant failed to establish that the employing establishment engaged in harassment/discrimination or committed error or abuse when handling administrative or personnel matters.

On July 18, 2016 appellant, through her representative, requested reconsideration of OWCP's August 1, 2016 decision. In a July 18, 2016 statement, the representative indicated that he was submitting e-mails which showed that the employing establishment committed wrongdoing with respect to authorization of overtime work performed by appellant. He also indicated that he was submitting additional medical evidence on appellant's behalf which OWCP should review.

Several e-mails, dated between January and August 2016, memorialize communications between appellant and employing establishment officials regarding appellant's request for authorization of overtime work. In these e-mails, the acting administrative officer advised appellant that overtime work had to be approved by her supervisor prior to performing such work.

Appellant submitted March 24 and August 15 and 29, 2016 reports of Dr. Walter Afield, an attending Board-certified psychiatrist. Dr. Afield diagnosed such conditions as major depressive disorder, generalized anxiety disorder, panic disorder, and post-traumatic stress disorder. In several reports dated between May 2016 and June 2017, Jennifer Barror-Levine, Psy.D., a clinical psychologist, discussed her periodic therapy sessions with appellant.

By decision dated December 21, 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 submitted by appellant was cumulative or irrelevant to the underlying issue of the present 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.⁴

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

⁴ 5 U.S.C. § 8128(a).

relevant and pertinent new evidence not previously considered by OWCP.⁵ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁶ 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.⁷

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.⁸ For OWCP decisions issued on or after August 29, 2011, the date of the application for reconsideration is the "received date" as recorded in the Integrated Federal Employees' Compensation System (iFECS).⁹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁰ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹²

A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation, including a stress-related condition, was caused or adversely affected by employment factors.¹³ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁴ Administrative and personnel matters, although generally related to the employee's employment,

⁵ 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).

⁶ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ 20 C.F.R. § 10.607(a).

⁹ 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.

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹² *John F. Critz*, 44 ECAB 788, 794 (1993).

¹³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993). When a claimant has not established any compensable employment factors, it is not necessary to consider the medical evidence of record. *See Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁶

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).

OWCP issued a decision on August 1, 2016, and it received appellant's request for reconsideration on July 18, 2017. Appellant's request was timely filed as it was received within one year of OWCP's August 1, 2016 decision.¹⁷

The issue presented on appeal is whether appellant's July 2017 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. The Board also finds that appellant did not submit pertinent new and relevant evidence which would require reopening of her claim for merit review.¹⁸

Appellant's representative argued that the employing establishment committed wrongdoing with respect to authorization of overtime work, and asserted that appellant established a compensable employment factor in this regard.¹⁹ In support of this argument, appellant submitted several e-mails, dated between January and August 2016, which memorialize communications between appellant and employing officials establishment regarding her request for authorization of overtime work. In these e-mails, the acting administrative officer advised appellant that overtime work had to be approved by her supervisor prior to performing such work.

The Board notes that these e-mails do not contain any finding regarding whether the employing establishment committed error or abuse in the handling of this matter, nor do the e-mails independently show such error or abuse. Therefore, these e-mails are not relevant to the underlying issue of whether appellant established compensable employment factors, including a factor related to wrongdoing by the employing establishment in the carrying out of the administrative function

¹⁵ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁶ *William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *See supra* note 9.

¹⁸ *See supra* note 6.

¹⁹ By decision dated August 1, 2016, OWCP denied appellant's claim for stress-related conditions because she failed to establish any compensable employment factors.

of authorizing overtime work.²⁰ The submission of this evidence does not require reopening of appellant's claim for further merit review because 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.²¹

Appellant submitted numerous documents relating to her medical condition, including reports of an attending physician, Dr. Afield, and reports of a clinical psychologist, Dr. Barror-Levine. As noted, the underlying issue in this case is whether appellant established compensable employment factors in connection with her claim for stress-related conditions, and this is a factual matter which must be addressed by relevant factual evidence. Therefore, these documents do not address the underlying factual aspect of the claim, *i.e.*, whether appellant established compensable employment factors. The documents do not constitute relevant and pertinent new evidence which would require reopening appellant's claim for merit review.²²

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).

²⁰ See *supra* notes 15 through 18.

²¹ See *supra* note 13.

²² See *id.*

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2018
Washington, DC

Christopher J. Godfrey, 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