



related to factors of her federal employment. She related that the employing establishment instructed her to work outside of her medical restrictions and that a coworker initiated a confrontation. Appellant stopped work on August 10, 2005.

In an undated statement received by OWCP on January 30, 2006, appellant indicated that OWCP previously accepted that in 1999 she sustained depression due to work factors under File No. xxxxxx372. She returned to work with restrictions necessitating a quiet environment without stress. Appellant, in 2004, began working in an area with W.G., a coworker, who told her that she could not use the telephone, her wastepaper basket, or sit at a desk in the office. W.G. repeatedly spoke in a raised voice to M.W., a supervisor. She used profanity towards appellant, told her not to speak to her, slammed doors, made racist comments, accused her of being treated like a princess, and possibly vandalized her vehicle. On July 27, 2005 W.G. answered a telephone call from appellant's husband and put down the receiver. When appellant went to get the telephone, W.G. accused her of coming to hit her and stated "that she was going to plaster appellant to the wall if she came near her again." M.G. told W.G. that appellant was only trying to get to the telephone. The next day M.G. transferred appellant to another office at the bulk mail center which she believed was outside her work restrictions.

By decision dated December 11, 2006, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable factors of employment and, thus, she had not established an emotional condition in the performance of duty. OWCP noted that the evidence supported appellant's contention that a coworker, W.G., raised her voice to M.W., a supervisor. It also found that the evidence established that W.G. referred to appellant as a princess, and that M.W. advised her to ignore W.G.'s actions. OWCP determined, however, that any reaction arising from such incidents was self-generated and not compensable. It further found that appellant had not factually established her allegation that W.G. yelled at her for using her wastebasket, slammed a door, made comments about her husband's race, or scratched her automobile.

Appellant, on December 11, 2007, requested reconsideration. In a December 6, 2007 statement, J.P., a coworker, related that he was not present when W.G. raised her voice to appellant, but that he had spoken with her after several incidents and she was clearly upset. He asserted that other coworkers witnessed W.G. harassing her, but were afraid to provide statements. After the July 27, 2005 incident, appellant was transferred to an office that violated her work restrictions.

By decision dated February 22, 2010, OWCP denied modification of its December 11, 2006 decision. It noted that it had conducted a merit review of the case as it received appellant's request for reconsideration on December 11, 2007, but did not adjudicate the request until February 2010, thus jeopardizing her right to a merit review by the Board. OWCP found that the witness statement she submitted from J.P., a coworker, was insufficient to support modification. It noted that J.P. recounted that he was not present on the occasions that W.G. raised her voice when speaking with appellant.

On October 13, 2010 appellant again requested reconsideration. In an October 4, 2010 witness statement, C.L., a union steward, advised that appellant informed her that W.G. yelled at her not to use her wastebasket and told her not to speak with her anymore. C.L. discussed the situation with M.W., who reassigned appellant to another location.

By decision dated November 17, 2010, OWCP denied modification of its February 22, 2010 decision. It determined that appellant had not established that W.G.'s actions rose to the level of verbal abuse or otherwise constituted a compensable work factor.

Appellant, on March 8, 2011, requested reconsideration. She submitted a March 1, 2011 statement from S.T., her husband. He described appellant's complaints of harassment by W.G. beginning in June 2005. S.T. advised that on July 27, 2005 he telephoned the office and W.G. answered. He heard W.G. tell M.G. that she was going to hit her, and M.G. responded that she was only going to use the telephone. W.G. stated that if appellant came near her again she intended to plaster her against the wall.

By decision dated September 29, 2016, OWCP denied modification of its November 17, 2010 decision. It found that S.T. did not directly hear or witness the incident and thus his opinion was insufficient to show that its prior decision should be modified.

On August 24, 2017 appellant requested reconsideration. In support of her request, she submitted a July 10, 2017 report from Dr. Luz Martin, a Board-certified psychiatrist. Dr. Martin related that she had treated appellant since October 20, 2003, when appellant saw a supervisor assault another employee. She noted that in 2005 she related that a coworker told her that she was going to plaster her to a wall and she had an argument with her supervisor about who was the boss. The employing establishment reassigned appellant to a loud work area. Dr. Martin noted that appellant had repeatedly advised that she experienced stress from her work at the employing establishment causing a "loss of sleep, headaches, feeling sick, [and] panic attacks." She attributed her symptoms of PTSD, anxiety, and depression to work stress.

By decision dated September 8, 2017, OWCP denied appellant's request for reconsideration, finding that she had not raised an argument or submitted evidence sufficient to warrant reopening her case for further review of the merits under 5 U.S.C. § 8128(a). It found that the medical evidence submitted on reconsideration was not relevant to the underlying factual issue of whether she had established a compensable work factor.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. 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>2</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument 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.<sup>3</sup>

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<sup>2</sup> *Id.* at § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see also* L.G., Docket No. 09-1517 (issued March 3, 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.<sup>4</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</sup> 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.<sup>6</sup>

### ANALYSIS

OWCP issued its most recent decision on the merits of appellant's claim on September 29, 2016. It received her request for reconsideration on August 24, 2017. Appellant's request for reconsideration was timely filed as it was received within one year of the last merit decision issued September 29, 2016.

The issue presented on appeal is whether appellant's August 24, 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 OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In her August 24, 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. She is thus 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).

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. In support of her request for reconsideration, she submitted a report dated July 10, 2017 from Dr. Martin. Dr. Martin described her treatment of appellant beginning October 20, 2003, and noted that she complained of work stress. She also related that she had been reassigned to the bulk mail center, that a coworker told her she was going to plaster her to a wall, and that she had argued with her supervisor over who was her manager. Dr. Martin attributed appellant's symptoms of PTSD, anxiety, and depression to work stress. Her history of injury, however, is based on appellant's statements rather than any personal knowledge of events at the employing establishment.<sup>7</sup> The underlying issue in this case is whether appellant has provided sufficient evidence to establish a compensable work factor. This issue is factual in nature. Dr. Martin's medical report is not relevant to the pertinent issue of whether she has established a

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<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>7</sup> *See J.L.*, Docket No. 16-1914 (issued March 29, 2017).

compensable work factor.<sup>8</sup> Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.<sup>9</sup>

On appeal appellant notes that one of her witnesses is now deceased and that OWCP delayed adjudicating two of her reconsideration requests. She further raises arguments relevant to the merits of her claim and requests a polygraph test. The only issue currently before the Board, however, is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) such that she would be entitled to a merit review. As found above, 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 relevant and pertinent new evidence not previously considered. 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).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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

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<sup>8</sup> *Id.*; see also *G.T.*, Docket No. 14-0859 (issued August 13, 2014).

<sup>9</sup> *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).