

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

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**I.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Memphis, TN, Employer**

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**Docket No. 19-1278  
Issued: December 30, 2019**

*Appearances:*  
*Joanne Marie Wright, for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 21, 2019 appellant, through her representative, filed a timely appeal from a December 6, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from OWCP's last merit decision, dated November 30, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the December 6, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## 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 January 22, 2015 appellant, then a 52-year-old modified letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed acute stress, depression, and anxiety as a result of her federal employment duties. She noted that OWCP had approved a prior claim in 2002, however, several incidents/episodes from 2002 through the present, required her to seek medical attention and or lose time from work. Appellant indicated that she was advised that she must submit a new claim.<sup>4</sup> She reported that she first became aware of her condition and its relationship to her federal employment on November 14, 2014.

In a development letter dated February 10, 2015, OWCP requested that appellant submit additional evidence in support of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated January 29, 2015, Dr. Tejinder Saini, a Board-certified psychiatrist, related that he had treated appellant for major depression since 2002. He related that her depression was due to job-related stress and that she returned for treatment due to a recurring depressive episode as her job had again aggravated her preexisting employment-related illness.

OWCP received several forms relating appellant's return to work dates in 2014, as well as an attending physician's report (Form CA-20) dated February 2, 2015 from a licensed social worker. It also received a Form CA-20 report from Dr. Saini dated March 10, 2015 which diagnosed major depression, recurrent, due to harassment by supervisor at work.

Appellant submitted an employing establishment grievance form dated October 21, 2014 which indicated that she had filed a grievance regarding disapproved annual leave. It had been resolved such that she would be allowed to take 16 hours of annual leave.

Witness statements were received from several of appellant's coworkers. In a letter dated March 6, 2015, E.P. related that she had worked with appellant for over 20 years and that appellant was a good worker, even though she had limited-duty restrictions. She related that, when appellant was offered a carrier/clerk position, several other clerks were not happy with the assignment and caused tension between the clerks, but appellant continued to work "to the best of her ability." Another coworker, T.S., related in a letter dated March 6, 2015 that appellant had requested that he sit in during a meeting with management. He related that, during this meeting, the acting employing establishment manager informed her that she should not work outside of her medical restrictions and that he would speak to appellant's supervisor regarding appellant's concerns.

By decision dated April 16, 2015, OWCP denied appellant's claim. It found that she failed to establish fact of injury because the evidence of record did not support that the occupational

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<sup>4</sup> The record reflects that appellant had filed a number of OWCP claims since November 2000, several of which remain open for medical care. None of these claims have been consolidated with the current claim.

exposure occurred as alleged. OWCP concluded that appellant had not substantiated a compensable factor of employment as she had failed to provide any factual or medical evidence of a work injury, and therefore that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence.

On April 12, 2016 appellant requested reconsideration and submitted additional evidence.

Appellant's allegations on reconsideration included that she was degraded, belittled, harassed, bullied, intimidated, and threatened beginning in 2001 through her last day of work on November 14, 2014 then again when she returned to work on July 22, 2015. She argued that she was placed off the clock by her previous supervisors thus creating a stressful work environment. Appellant alleged that this occurred even when the employing establishment had work within her limitations. She indicated that this caused undue financial and mental stress. Appellant also indicated that, when she attempted to return to work on July 21, 2015 she was advised to bring updated medical documentation, and despite providing the requested documentation the next day, she was not allowed to clock in. She also indicated that she was told that she would be put off the clock in May 2014 if she did not sign a limited-duty job offer, despite her belief that the job was not within her limitations.

By decision dated August 16, 2016, OWCP denied modification of the April 16, 2015 decision. It found that there were no accepted events that were factors of employment.

On August 12, 2017 appellant requested reconsideration. Appellant's representative submitted a memorandum in which she argued that appellant's preexisting accepted emotional condition under OWCP File No. xxxxxx373 was aggravated, she accepted a modified job offer under protest, she was denied work, sent home improperly, charged with absent without leave, and suffered emotionally and financially. She alleged that the employing establishment had an obligation to provide appellant with a suitable job with her restrictions under her prior accepted claim. Appellant's representative contended that appellant's claims should be combined.

By decision dated November 30, 2017, OWCP denied modification of its prior decision. It explained that the cases were accepted for different conditions and were not suitable for combination. OWCP found that appellant's allegations of not being provided suitable work under OWCP File No. xxxxxx699 that resulted in an aggravation of her preexisting condition under OWCP File No. xxxxxx373 were not supported.

On November 28, 2018 appellant, through her representative, requested reconsideration. Appellant's representative again noted that appellant had several accepted employment injuries. She noted that OWCP File No. xxxxxx373 was accepted for acute stress. Appellant's representative also noted that appellant was required to work a modified-duty position under OWCP File No. xxxxxx699, that she accepted a limited-duty position under OWCP File No. xxxxxx699 under protest, and that Dr. Saini had provided a detailed description of work events on November 13, 2014 that aggravated appellant's preexisting condition under OWCP File No. xxxxxx373.

Along with the request, OWCP also received a November 20, 2014 letter from appellant. Appellant explained that her continued job-related stressors aggravated her approved claim. She alleged that she was subjected to a hostile work environment as a result of her limited-duty job

offer and was either forced to work outside her limitations or taken off the clock if she refused to do so. Appellant reported that on November 14, 2014 she was unable to work outside her limitations because her “knees and ankles were swollen, stiff, and hurting very bad,” and was sent home. She argued that her supervisors were required to check if there was work within a 50-mile radius of her station, but did not do so and that she became emotional walking to her car after this incident.

Appellant further indicated that she was constantly watched, instructed to move from one place to another, and denied her breaks, despite having a restriction on standing limited to two to four hours intermittently during an eight-hour period, and a 10-minute break. She reported that, in October 2014, she was followed into the restroom by a supervisor, “W” and that another supervisor followed her into the restroom in 2002. Appellant further alleged that another worker, “A” was not doing her work, and that she was having to do that work as well as her own. She noted that her employer took away “8 hours of my retirement time for every 80 hours of accumulated leave without pay (LWOP)” and told her that they did not have any work for her.

OWCP received reports dated March 13, July 3, October 23, and November 26, 2018, from Dr. Saini.

By decision dated December 6, 2018, OWCP denied appellant’s request for reconsideration of the merits of her claim.

### **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 or her own motion or on application.<sup>5</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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>6</sup>

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>7</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</sup> If the request is timely, but fails to meet at least one

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see also B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>7</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of its decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees’ Compensation System. *Id.* at Chapter 2.1602.4b.

<sup>8</sup> *Id.* at § 10.608(a); *see also A.P.*, Docket No 19-0224 (issued July 11, 2019).

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In support of appellant's November 28, 2018 request for reconsideration, appellant's representative again argued that appellant had accepted a modified-duty assignment under protest, and that she had not been provided a proper offer of modified assignment. The Board finds that these assertions are duplicative of arguments counsel has made in the past. 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.<sup>10</sup> These allegations 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. Accordingly, appellant has not established a basis for further merit review under the first and second above-noted requirements of 20 C.F.R. § 10.606(b)(3).

Along with her reconsideration request, appellant also submitted a November 20, 2014 narrative statement repeating her prior allegations and providing new details regarding specific incidents. She explained that on November 14, 2014 she was unable to work outside her limitations because her "knees and ankles were swollen, stiff, and hurting very bad," and was sent home. Appellant argued that management was required to check if there was work for her within a 50-mile radius of her station and failed to do so, and that she became emotional walking to her car after this incident. She also stated that, in October 2014, she was followed into the restroom by a supervisor, "W" and that another supervisor followed her into the restroom in 2002. Appellant argued that she was subjected to a hostile work environment as a result of her limited-duty job offer and either forced to work outside her limitations, or put off the clock when she refused to work outside her restrictions. She reported that she was denied breaks, despite having a restriction on standing limited to two to four hours intermittently during an eight-hour period, and a 10-minute break. Appellant stated that her employer took away "8 hours of my retirement time for every 80 hours of accumulated LWOP" and told her that they did not have any work for her.

The underlying issue in this case is whether appellant submitted sufficient evidence to establish a compensable factor of employment. This is a factual issue which must be addressed by relevant new factual evidence.<sup>11</sup>

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<sup>9</sup> *Id.* at § 10.608(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

<sup>10</sup> *F.D.*, Docket No. 19-0890 (issued November 8, 2019); *see J.B.*, Docket No. 18-1531 (issued April 11, 2019).

<sup>11</sup> *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *see Bobbie F. Cowart*, 55 ECAB 746 (2004).

The Board finds that appellant submitted relevant and pertinent new factual evidence related to the underlying issue in this claim.<sup>12</sup> Thus, appellant is entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).<sup>13</sup>

This case will therefore be remanded for OWCP to conduct a merit review of the claim, to be followed by an appropriate merit decision.

**CONCLUSION**

The Board finds that OWCP improperly 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 December 6, 2018 nonmerit decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 30, 2019  
Washington, DC

Janice B. Askin, 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>12</sup> See *K.J.*, Docket No. 19-0146 (issued July 10, 2019); see also *E.R.*, Docket No. 17-1055 (issued August 17, 2017).

<sup>13</sup> *H.H.*, Docket No. 18-1660 (issued March 14, 2019).