

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

K.B., Appellant)	
)	
and)	Docket No. 18-1392
)	Issued: January 15, 2019
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Kansas City, MO, Employer)	
)	

Appearances:
Melford V. McCormick, Esq., for the appellant¹
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 9, 2018 appellant, through counsel, filed a timely appeal from a June 21, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from OWCP's last merit decision, dated July 24, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The case record also contains a January 10, 2018 nonmerit decision of OWCP, but appellant has not appealed this decision to the Board.

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 12, 2017 appellant, then a 49-year-old supervisory contact representative, filed a traumatic injury claim (Form CA-1) alleging an injury while at work on December 9, 2016 due to an administrative assistant circulating a document with her social security number (SSN) "in plain view for all to see." She asserted that she sustained depression, anxiety, and post-traumatic stress syndrome due to this incident. Appellant stopped work on December 19, 2016.⁴

In a January 20, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her emotional condition claim. It attached a questionnaire for her completion regarding the claimed events of December 9, 2016. Appellant was afforded 30 days to respond.

In a response received on February 16, 2017 appellant asserted that, on December 9, 2016, the employing establishment intentionally circulated a manual refund signature authorization form (Form 14031) which contained her SSN.

In a January 18, 2017 letter, a human resources specialist for the employing establishment discussed the circumstances surrounding the Form 14031 that contained appellant's SSN. In a February 13, 2017 letter, an operations manager for the employing establishment indicated that the Form 14031 completed by appellant was sent to several managers by e-mail to show what a correctly completed Form 14031 looked like, but that appellant's SSN was mistakenly left on the form.⁵

Appellant submitted copies of e-mails, dated in December 2016, regarding the completion of Forms 14031, and a January 11, 2017 e-mail sent to appellant by her counsel of record at the time. An e-mail dated December 9, 2016 shows that five managers received appellant's Form 14031 by e-mail.

In a January 12, 2017 report, Dr. Lester E. Blue, Jr., an attending clinical psychologist, indicated that he had treated appellant since November 12, 2016. He noted that appellant reported experiencing fear and panic after her SSN number was released by an administrative assistant at work. Dr. Blue diagnosed major depressive disorder and panic disorder. In a February 15, 2017

⁴ On the reverse side of the Form CA-1, appellant's immediate supervisor indicated that the employing establishment was controverting appellant's claim. The supervisor indicated that the document with appellant's SSN was not circulated for all to see, but rather was only sent to select management officials by mistake.

⁵ The record contains a report of occupational injury, illness, accident, or unsafe condition completed by appellant's immediate supervisor in January 2017. In this report, the supervisor discussed appellant's claim for a December 9, 2016 injury. In a February 7, 2017 e-mail, the supervisor further discussed appellant's claim.

attending physician's report (Form CA-20), he indicated that appellant was totally disabled from December 19, 2016 to March 25, 2017.

By decision dated February 24, 2017, OWCP denied appellant's claim for an employment-related emotional condition claim. It determined that appellant's claim was denied because she failed to establish compensable employment factors. In particular, OWCP noted that appellant failed to establish an employment factor with respect to the events of December 9, 2016. It noted that on December 9, 2016, as part of an administrative function designed to ensure that operations ran smoothly, a Form 14031 which mistakenly contained appellant's SSN was sent by e-mail to several management officers. However, the Form 14031 was not circulated for all to see as alleged by appellant and the distribution of the form was not intentional. OWCP found that the incident did not warrant a finding of error or abuse by the employing establishment.

On June 6, 2017 appellant, through counsel, requested reconsideration of OWCP's February 24, 2017 decision. In an accompanying memorandum, appellant's counsel of record at the time argued that the distribution of the Form 14031 with appellant's SSN constituted a compensable employment factor. Appellant submitted additional evidence in support of her claim, including several administrative documents and e-mails dated between 2011 and 2016.

By decision dated July 24, 2017, OWCP denied modification of its February 24, 2017 decision. It continued to find that appellant's claim was denied because she failed to establish compensable employment factors.

On December 26, 2017 appellant, through counsel, requested reconsideration of OWCP's July 24, 2017 decision. Appellant submitted a July 28, 2017 report in which Dr. Blue's discussed appellant's continuing psychotherapy and diagnosed major depressive disorder (recurrent) and post-traumatic stress syndrome.

By decision dated January 10, 2018, 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 and argument appellant submitted in support of her reconsideration request was irrelevant or immaterial to the underlying factual issue of her claim.

On March 2, 2018 appellant, through counsel, again requested reconsideration of OWCP's July 24, 2017 decision. In a February 24, 2018 letter, counsel indicated that a report of Dr. Blue would be submitted.

In a May 23, 2018 letter to OWCP, appellant requested that her case be expedited due to the fact that she was having financial problems.

In a July 28, 2017 report, Dr. Blue discussed the events at work on December 9, 2016 and other incidents at work reported by appellant as occurring between 2011 and 2016. He discussed his treatment of appellant for psychological problems and diagnosed major depressive disorder (recurrent) and post-traumatic stress syndrome. Appellant also submitted treatment notes of Dr. Blue dated between November 2016 and January 2018. In a January 29, 2018 report, Dr. Karla Houston-Gray, an attending Board-certified internist, indicated that appellant reported experiencing stress in the workplace.

By decision dated June 21, 2018, 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 appellant submitted in support of her reconsideration request was not pertinent to the underlying factual issue 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. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.⁶

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 relevant and pertinent new evidence not previously considered by OWCP.⁷ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁸ 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.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

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).

With her timely request for reconsideration 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.¹² Consequently appellant is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(3); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *Id.* at § 10.608(a); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. The underlying issue in this case is whether appellant has submitted sufficient evidence to establish a compensable employment factor in her emotional condition claim.

In support of her March 2, 2018 reconsideration request, appellant submitted a July 28, 2017 report in which Dr. Blue, an attending clinical psychologist, discussed his treatment of appellant for psychological problems stemming from work incidents between 2011 and 2016 and diagnosed major depressive disorder (recurrent) and post-traumatic stress syndrome. She also submitted treatment notes of Dr. Blue dated between November 2016 and January 2018. In a January 29, 2018 report, Dr. Houston-Gray, an attending physician, indicated that appellant reported experiencing stress in the workplace.

Because the underlying issue in this case is factual in nature, it must be addressed by relevant factual evidence. The Board finds that appellant did not submit any relevant and pertinent new evidence in this case.¹³ Appellant's submission of medical evidence would not require reopening of her claim for review on the merits because such medical evidence is not relevant to the above-noted underlying factual issue of this case. 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.

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).

¹³ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board