

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 27, 2013 appellant then a 46-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that continued harassment by her supervisor, T.H., including threats to her job security, threats of discipline, embarrassment, while in the performance of duty, caused depression, anxiety, panic attacks, feelings of being overwhelmed, fatigue, headaches, and elevated blood pressure. She noted specifically that, on Monday, February 25, 2013, she experienced an anxiety attack because her supervisor screamed at her and threatened her. Appellant indicated that paramedics were called and she was taken to the hospital. She noted that she was taken off work for the rest of that day and the following day, but told to report back to work on February 27, 2013. Appellant indicated that she first became aware of her claimed conditions and their relationship to her federal employment on November 8, 2013. She noted that the reason she did not file a claim earlier was that she attempted to ignore her supervisor's hostile and stressful encounters until his behavior and the interaction with him became intolerable. On the reverse side of the claim form, T.H. contended that appellant had returned to work with limited use of her right arm, but there were no restrictions from a physician related to stress or anxiety. He also noted that appellant's accusations were "false."

In a February 14, 2013 treatment note, Dr. Frederic Matthew Johnson, a Board-certified family practitioner, noted that appellant was seen for persistent right shoulder pain. He also noted that she had other concerns which included anxiety symptoms secondary to job-related pressure to keep her work at the required pace. Dr. Johnson also indicated that appellant denied any prior or current problems with dysthymia or depression. He also noted that she denied having suicidal ideation, obsessions, compulsions, or pain. Dr. Johnson diagnosed right shoulder pain, osteoarthritis, and work-related situational anxiety.

By development letter dated March 4, 2013, OWCP informed appellant that the evidence submitted was insufficient to establish 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 provide the necessary information.

In a February 15, 2013 statement, addressed to her supervisor, T.H., appellant detailed the specifics of her claim. She informed him that she believed that she was being subjected to a hostile and stressful work environment since being placed on his team. Appellant noted that he continued to harass her and approach her with matters related to her medical condition and time off from work due to her previous surgeries. She related that she was threatened with being written up or being absent without leave (AWOL) when in fact, she had provided documentation supporting her absence. Appellant also noted that T.H. repeatedly requested notes from her doctor, despite her having already provided them. She alleged that T.H. would embarrass her by asking her if she was on break when someone stopped by her desk to talk to her. Appellant noted that he would tell her to use the break room for conversing with coworkers, but he had never advised employees that they could not stop at her desk. She indicated that she was humiliated when he raised his voice at

her. Appellant explained that she did not feel comfortable in the break room and she felt that she felt like she had to walk on eggshells while working for him.

Appellant also alleged that repetitive typing has caused her right hand and shoulder continuous pain. She noted that her doctor limited her typing to three hours a day and the new assignments took more than three hours to complete. Appellant further indicated that she was not given proper training and claimed that it was T.H.'s intention for her to be unsuccessful. She also indicated that she believed that she was being singled out and discriminated against. Appellant noted that a former coworker, S.J., was never admonished by T.H. for conversations with coworkers.

By decision dated August 25, 2014, OWCP denied appellant's emotional condition claim. It found that the only incident that was established as factual was that T.H. had not filed her claim for an occupational disease as of February 24, 2013. OWCP explained, however, that the accepted factor was administrative in nature without a showing of error or abuse. It further found that appellant's other allegations were not established as factual. Thus, appellant had not established that she sustained an emotional condition in the performance of duty.

On September 2, 2014 appellant, through counsel, requested a telephonic hearing. On January 30, 2015 OWCP's hearing representative conducted a preliminary review and vacated the August 25, 2014 decision, finding that the case was not in posture for decision with regard to appellant's absences and whether they were related to a pending workers' compensation claim.

On remand OWCP further developed the claim. On May 14, 2015 it requested that the employing establishment provide additional information regarding appellant's absences.

In a May 26, 2015 response, the employing establishment explained that it properly charged appellant with AWOL.

By decision dated July 28, 2015, OWCP again denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that she sustained an emotional condition in the performance of duty, as alleged.

On August 5, 2015 appellant, through counsel, requested a telephonic hearing, which was held before an OWCP hearing representative on March 17, 2016.

On April 21, 2016 the employing establishment provided comments disagreeing with appellant's allegations.

OWCP subsequently received a September 13, 2013 emergency room report from Dr. Daniel McBride, a Board-certified orthopedic surgeon. Dr. McBride noted that appellant was seen for chest pain and a positive stress test. He indicated that appellant was admitted a day prior to his consultation with symptoms of right-sided shoulder and neck pain. Dr. McBride explained that she had a previous injury in the neck and surgery performed on her cervical spine. He noted that she was emotionally upset the previous day since she was scheduled to go to a rehabilitation center and her leave request was turned down. Dr. McBride advised that she underwent a stress test which showed possible lateral wall ischemia. He related that appellant denied any angina or chest discomfort. Dr. McBride examined appellant and found that she was in no acute distress.

He related that her electrocardiogram (EKG) revealed a normal sinus rhythm at 67 beats per minute with normal axis, intervals, no ectopy, no acute ischemic findings. Dr. McBride diagnosed chest pain of unknown etiology, and that appellant was admitted for cardiac risk stratification. Additionally, he diagnosed hypertension, anxiety reaction, and hypocalcemia.

By decision dated June 1, 2016, OWCP's hearing representative affirmed the July 28, 2015 decision.

On June 1, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence, including page one of a four-page February 6, 2014 report, from an unknown physician, a copy of a September 10, 2013 letter from appellant related to the status of her leave, and June 13, 2013 treatment notes from Dr. Scott Matthis, an osteopath, who treated appellant for neck conditions. OWCP also received a duplicate copy of the September 13, 2013 report from Dr. McBride.

Additionally, OWCP received part of a February 27, 2014 form from K.V., who had served as appellant's supervisor since April 2013, noting that other staff needed to cover appellant's work and their workload had doubled. K.V. indicated that appellant did not come into work and had exhausted all of her leave.

Appellant also submitted a July 9, 2012 cervical spine MRI scan read by Dr. Raj Agrawal, a diagnostic radiologist, which revealed a grade 3 annular tear at the C4-5 level; and a July 11, 2012 discharge report for a cervical discogram. In a December 10, 2012 report, Dr. Archie C. Perry, a Board-certified orthopedic surgeon, treated appellant for follow up of her cervical spine.

By decision dated August 28, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

³ *Id.* at § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

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).

Appellant's timely 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. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The reports submitted on reconsideration dated July 11 and December 10, 2012, and February 6, 2014, relate to a neck and shoulder injury. They are irrelevant to the underlying merit issue of whether appellant established an emotional condition in the performance of duty. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

The Board notes that the September 13, 2013 report from Dr. McBride regarding chest pain and hypertension was previously considered by OWCP. Additionally, the September 10, 2013 statement from appellant was also addressed in the prior decisions. The Board has held that evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁷

The Board thus finds that 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. As appellant did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

CONCLUSION

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

⁵ *Id.* at § 10.608.

⁶ *See E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁷ *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2019
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