

FACTUAL HISTORY

On November 1, 2017 appellant, then a 59-year-old supervisor of distribution operations, filed an occupational injury claim (Form CA-2) alleging that she sustained an emotional condition due to various incidents and conditions at work. Appellant indicated that, on October 22, 2017, she first became aware of her claimed injury and realized its relation to her federal employment. She stopped work on October 25, 2017. OWCP assigned the claim OWCP File No. xxxxxx960. On the reverse of the Form CA-2, appellant's immediate supervisor indicated that the employing establishment was challenging the claim.

In statements dated October 28, 2017, appellant asserted that she sustained a panic attack due to learning on October 22, 2017 that the employing establishment allowed M.W., an employee who had previously assaulted her, to return to work on October 20, 2017 in her work unit. She maintained that M.W. had assaulted her at work on May 29, 2017 by grabbing her neck and knocking her right hand against a machine such that she sustained a finger laceration. Appellant indicated that, since October 22, 2017, she felt that her life was "threatened and in danger." She asserted that she was working in a hostile work environment and claimed that she had developed post-traumatic stress syndrome. Appellant also submitted a disability note from Dr. Timothy E. Irvine, a Board-certified family practitioner.³

In a November 6, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her occupational disease claim. It provided a questionnaire for her completion which posed various questions regarding the events of May 29, 2017 and the return of M.W. to work in October 2017. OWCP afforded appellant 30 days to respond. On November 6, 2017 it also requested additional information from the employing establishment which was to be submitted within 30 days.

In response, appellant submitted a November 16, 2017 statement in which she asserted that, on November 23, 2016, M.W. had wrongly accused her of mistreating her son who worked in the same work unit. She also submitted additional documents concerning the events of May 29, 2017, including statements she and M.W. produced on that date, M.W.'s responses to an investigative interview the employing establishment conducted on May 30, 2017, and her own responses to an investigative interview conducted on June 20, 2017.

In a November 7, 2017 letter, a distribution operations manager for the employing establishment maintained that it was proper for M.W. to return to work in October 2017 because it had been determined that the evidence was insufficient to support the disciplinary action which removed her from her job. The manager asserted that she provided appellant an opportunity to work on the other side of the building from M.W.

³ Under OWCP File No. xxxxxx402 appellant previously filed a claim for a May 29, 2017 traumatic injury due to an alleged assault by M.W. on that date. OWCP initially accepted the claim for contusion and laceration (with foreign body) of the right hand. By decision dated February 16, 2018, OWCP rescinded its acceptance of the claim, effective February 14, 2018, due to its finding that appellant was not in the performance of duty at the time of the claimed injury on May 29, 2017. By decision dated May 23, 2018, a representative of OWCP's Branch of Hearings and Review set aside the February 16, 2018 decision and remanded the case for OWCP to clarify the reasons for its rescission action. OWCP has administratively combined OWCP File Nos. xxxxxx402 and xxxxxx960, with OWCP File No. xxxxxx402 designated as the master file.

By decision dated December 28, 2017, OWCP denied appellant's emotional condition claim, finding that she had not established fact of injury. It determined that she had not submitted factual evidence sufficient to establish a compensable employment factor. OWCP found that appellant was not in the performance of duty at the time of her interaction with M.W. on May 29, 2017 and that the employing establishment had not committed wrongdoing in connection with M.W.'s return to work in October 2017.

On January 30, 2018 appellant requested reconsideration of the December 28, 2017 decision. In a January 18, 2018 statement, she continued to argue that she was injured in the performance of duty on May 29, 2017. Appellant maintained that she did not follow M.W. on that date and asserted that the employing establishment did not conduct an on-site investigation of the matter. She discussed the anxiety she experienced when she learned that M.W. returned to work on October 22, 2017.⁴ Appellant also submitted additional medical evidence in support of her claim.

By decision dated May 30, 2018, OWCP denied modification of its December 28, 2017 decision. It again determined that appellant had not established a compensable employment factor.⁵

On June 8, 2018 appellant requested reconsideration of the May 30, 2018 decision. She submitted several reports, dated between November 2017 and January 2018, in which Linda R. Brown, a licensed clinical social worker, discussed appellant's emotional condition.

By decision dated June 26, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On September 17, 2018 appellant requested reconsideration of the May 30, 2018 merit decision. In a September 12, 2018 letter, she claimed that the employing establishment had not conducted an investigation of the events of May 29, 2017. Appellant asserted that she was in the performance of duty on May 29, 2017 and maintained that she did not follow M.W. or attack her on that date.

By decision dated October 26, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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

⁴ Appellant submitted copies of disciplinary actions against M.W. which the employing establishment issued on December 26, 2015 and June 12, 2017.

⁵ OWCP's May 30, 2018 decision contains the title "corrected decision" and was intended to correct an April 9, 2018 decision in the case record.

⁶ 5 U.S.C. § 8128(a).

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

To be timely, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁰ Timeliness is determined by the document "received date" as recorded in the integrated Federal Employees' Compensation System.¹¹ If the last day of the one-year time period is a Saturday, Sunday, or a legal holiday, OWCP will still consider a request to be timely filed if it is received on the next business day.¹²

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.¹³

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).

On September 17, 2018 appellant filed a timely request for reconsideration of OWCP's May 30, 2018 decision denying her emotional condition claim.¹⁴ However, she did not establish that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or constituted relevant and pertinent new evidence not previously considered by OWCP.

In support of her request for reconsideration, appellant submitted a September 12, 2018 letter in which she argued that she was in the performance of duty on May 29, 2017. She maintained that she did not follow M.W. or attack her on that date and claimed that the employing establishment did not investigate the matter. The Board finds, however, that appellant previously

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 20 C.F.R. § 10.607(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

¹² *Id.* *See also M.A.*, Docket No. 13-1783 (issued January 2, 2014).

¹³ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁴ *See supra* note 10.

made similar arguments and OWCP has already considered and rejected them.¹⁵ The Board has held that the submission of argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶

Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first, second, or third requirement under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied appellant's request for 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 October 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁵ OWCP denied the present emotional condition claim because appellant had not established a compensable employment factor, including with respect to the events of May 29, 2017.

¹⁶ See *supra* note 13.