

FACTUAL HISTORY

On September 1, 2017 appellant, then a 50-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2017 she developed mental stress due to an employment incident while in the performance of duty. She attributed her condition to a negative confrontation with her acting manager which had escalated, causing her to lose her breath, feel dizzy, and collapse. The employing establishment indicated on Form CA-1 that there were no witnesses to the collapse.

In a medical emergency report from the employing establishment's primary emergency response team dated August 16, 2017, D.A. indicated that appellant was found seated against the wall experiencing hyperventilation, pain and numbness in her right arm, her eyes were rolling back, and she had pain in her left leg. Appellant was given oxygen and transported by ambulance to the hospital.

The employing establishment submitted a statement from M.D., dated August 31, 2017, in which he indicated that appellant had long-standing anxiety issues. M.D. noted that appellant was provided reasonable accommodation based on her medical condition, which permitted her to use liberal leave when there was heavy traffic or inclement weather provided her work requirements were met satisfactorily. Appellant requested an extension of her reasonable accommodation. Based on the customers she supports, M.D. determined that the tasks assigned to her were not being carried out satisfactorily. On the day of the incident he requested that appellant provide a roadmap as to how she would carry out her duties effectively so that the reasonable accommodation request could be extended. Appellant referred to this request as a negative interaction. M.D. indicated that during the discussion appellant seemed to get anxious and left the room twice and reported a panic attack.

On September 7, 2017 Dr. Rory J. Duffour, a Board-certified family practitioner, indicated that appellant presented with some neurologic symptoms and could not return to work for at least two weeks until she had a complete work up.

In a September 11, 2017 development letter, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence from her and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

An August 16, 2017 after visit summary from Dr. Ashley Shreves, a Board-certified emergency room physician, diagnosed panic attack and anxiety problem. Similarly, an August 18, 2017 after visit summary from Dr. Scott Thames, a Board-certified emergency room physician, diagnosed anxiety problem, chest pain, and acute nonintractable headache.

An August 18, 2017 note from Chris Gee, a registered nurse, indicated that appellant was treated in the emergency room and could return to work on August 22, 2017.

On August 23, 2017 Dr. Duffour noted that appellant could return to work on September 5, 2017 with "reasonable accommodations in place." On September 7, 2017 he noted that appellant was treated on September 6, 2017 and developed neurologic symptoms and was unable to perform her administrative duties until she was seen by a neurologist.

In an undated statement, appellant indicated that on August 16, 2017 she was approached by M.D. who indicated that her reasonable accommodation was not approved and that management required updated medical documentation. She reported that before she initiated the process for an extension she spoke with the reasonable accommodation department and was informed that she did not need additional information. Appellant indicated that she would update the medical documentation. She advised that M.D. proceeded to inform her of the negative feedback from her coworkers regarding her leave, annual reports, leave changes, not answering the telephones, and timely entering forms into the system.

A magnetic resonance imaging (MRI) scan of the brain dated September 20, 2017 demonstrated no evidence of an acute infarct, intracranial bleed, or malignancy.

Appellant was treated by Alison Johnston, a licensed social worker, on October 1, 2017 who diagnosed unspecified depressive disorder and panic disorder. Ms. Johnston reported a significant degree of work-related stress.

On October 5, 2017 Dr. Ramy E. Khoury, a Board-certified neurologist, treated appellant for severe headaches. He diagnosed migraines, depression, and panic attack.

On October 11, 2017 appellant was treated by Desiree Norman, a nurse practitioner, who diagnosed major depressive disorder, generalized anxiety disorder, insomnia, and panic disorder related to her work.

By decision dated October 17, 2017, OWCP denied appellant's emotional condition claim, finding that the evidence submitted was insufficient to establish the factual component of her claim.

On November 29, 2017 appellant requested reconsideration of the October 17, 2017 decision.

By decision dated December 13, 2017, OWCP denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On October 17, 2018 appellant again requested reconsideration. In an undated statement, she indicated that she had an existing disability for which management had offered a reasonable accommodation. Appellant asserted that management knew of her condition and harassed her, exacerbating her symptoms and causing her to be hospitalized on August 16 and 17, 2017. She indicated that she was removed from service on May 10, 2018 and had filed two Equal Opportunity Employment complaints. In support of her reconsideration request, appellant submitted an earnings and leave statement dated December 27, 2015 and a timesheet from January 22, 2017. She also submitted an e-mail dated March 9, 2017 in which her reasonable accommodation request was granted and she was permitted to telework twice a week to minimize her anxiety level associated with long commutes.

Also received were April 12 and August 4, 2017 notes from Dr. Edward Dauterive, III, a Board-certified gastroenterologist, who treated appellant for various digestive system concerns.

In an August 4, 2017 after visit summary, Dr. Duffour treated appellant for various digestive system maladies.

In an undated statement, Dr. Khoury noted treating appellant for headaches related to her work environment and recommended that she switch her current work environment.

In a December 1, 2017 statement, Dr. James M. Houser, a Board-certified neurologist, treated appellant for migraine headaches. Appellant reported an increase in the frequency and intensity of her headaches associated with work-related stress and anxiety. Dr. Houser indicated that it would be in appellant's best interest to be transferred to another facility.

By decision dated January 11, 2019, 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 does not entitle a claimant to review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴

Upon receipt of a timely application, OWCP exercises its discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which either: (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.⁵

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.⁶

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a); *C.C.*, Docket No. 18-0316 (issued March 14, 2019). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's 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.

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b).

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 October 17, 2018 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).

With her reconsideration request, appellant submitted April 12 and August 4, 2017 notes from Dr. Dauterive, an August 4, 2017 report of Dr. Duffour, an undated statement from Dr. Khoury, and a December 1, 2017 statement from Dr. Houser. All of these reports fail to address the underlying issue on appeal of whether appellant had established the factual component of her claim. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁷

Appellant submitted an earnings and leave statement dated December 27, 2015 and a timesheet from January 22, 2017. Also received was an e-mail dated March 9, 2017, noting that appellant's reasonable accommodation was granted and appellant was permitted to telework twice a week. However, these submissions likewise fail to address the underlying issue in this case.⁸

Because appellant's request for reconsideration did not include relevant and pertinent new evidence not previously considered, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).⁹

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). 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).

⁷ *M.B.*, Docket No. 17-1980 (issued May 14, 2019); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Id.*

⁹ 20 C.F.R. § 10.606(b)(3)(iii); *see D.P.*, Docket No. 17-0290 (issued May 14, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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