

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

_____)	
J.W., Appellant)	
)	
and)	Docket No. 18-0822
)	Issued: July 1, 2020
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Greensboro, NC, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Joanne Marie Wright, for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 11, 2018 appellant filed a timely appeal from a December 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision dated October 25, 2016, 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 this case.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 Board notes that, following the December 19, 2017 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 under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 7, 2014 appellant, then a 32-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed "occupational stress" due to factors of her federal employment. She explained that a series of events contributed to her condition, including that a truck driver for the employing establishment with whom she had worked, M.S., murdered another postal clerk whom she knew. Appellant indicated that M.S. had also harassed her while at the employing establishment, he had her contact information, and he would send her inappropriate photos to her phone. She explained that contemporaneously with the murder incident she was verbally assaulted by a coworker who cursed at her while at the time clock and she was required to call the police on a postal customer who had followed her and yelled at her over a piece of previously returned mail. Appellant explained that due to the murder by M.S. she was in consultation with the Employee Assistance Program (EAP)⁴ and that the acts of her coworker and the postal customer were more than she could take emotionally.⁵ She noted that she did not feel safe at work. Appellant did not stop work.

A June 7, 2014 police report noted that appellant had called for assistance due to a man cursing at her and also noted that she complained that she was feeling threatened.

In a June 7, 2014 duty status report (Form CA-17), a family practitioner with an illegible signature noted that appellant presented after being followed by a postal customer who was yelling and screaming. The physician noted several potential diagnoses and restricted appellant from returning to work until cleared by a mental health professional.

In a June 10, 2014 Form CA-17 report, Dr. Rupinda Kaur, a Board-certified psychiatrist, restricted appellant from returning to work due to her psychiatric condition. She noted appellant had been followed down the street by a postal customer who yelled and screamed at her. Dr. Kaur noted she was fearful, shaky, nervous, nauseous, had disturbed sleep at night, and was apprehensive due to acute stress. She diagnosed acute stress disorder. In a June 16, 2014 report, Dr. Kaur diagnosed acute stress disorder and post-traumatic stress disorder (PTSD). She reported the history of a March 24, 2014 incident in which appellant's coworker killed one lady, beat another one severely, and then committed suicide. Dr. Kaur further indicated that a male coworker had threatened and cursed at appellant at work and that on June 7, 2014 a customer followed her and yelled at her while on her mail route. She concluded that appellant was traumatized by these events and was experiencing recurrent, involuntary, and intrusive flashbacks and distressing memories of these traumatic events.

⁴ Appellant submitted a note from a USPS EAP consultant who noted that appellant had contacted EAP on April 9, 2014 and had continued counseling.

⁵ In a record of a telephone call dated June 24, 2014, OWCP noted that appellant had called to inform them that the narrative statement on her claim form was not accurate, was illegible, and was completed without giving her the time she requested to provide greater detail.

In a letter dated June 17, 2014, Dr. Kaur noted that appellant had been under psychiatric care after a close friend passed away. She noted that on March 24, 2014 another coworker killed one lady, severely beat another, and then committed suicide. Dr. Kaur noted appellant's trauma and noted examination findings. She noted that appellant presented with multiple signs and symptoms of PTSD and that she was having flashbacks to the traumatic events.

In a letter dated June 17, 2014, the employing establishment controverted appellant's claim. It noted that its controversion was based on fact of injury, performance of duty, and causal relationship. The employing establishment also submitted a handwritten statement from A.M. who asserted that the claim should be denied because the incident with the postal customer who was angry was an occurrence that all carriers encounter and the customer was only angry because he wanted mail that appellant had returned the day prior.⁶

In a development letter dated June 24, 2014, appellant was informed of the deficiencies of her claim and was instructed as to the type of factual and medical evidence necessary to establish her claim. OWCP included a questionnaire for her completion. On the same date, it also sent a development letter to the employing establishment requesting information relative to the claim. OWCP afforded both appellant and the employing establishment 30 days to respond.

Appellant submitted numerous statements from coworkers and others in support of her claim. These statements included a June 23, 2014 statement by S.I., a coworker, who explained the murder-suicide by M.S. and explained its traumatic nature on coworkers. She noted that the police had informed the postal service that M.S. was possibly targeting postal employees. S.I. asserted that the employing establishment completely disregarded the workers' safety as they failed to inform them of the actions of M.S. and the possibility he was targeting them prior to his suicide. She explained that appellant called her when news reports surfaced because she was disturbed due to her interactions with M.S. who had asked her out several times. S.I. noted that appellant had rebuffed the advances of M.S. and was especially worried and in shock because she knew M.S. personally and nobody knew his motives for his actions, but the actions were against other women. A June 26, 2014 statement of T.R., a coworker, claimed that female employees were generally subjected to a hostile environment.

On July 4, 2014 appellant responded to the development questionnaire. On July 8, 2014 she submitted a detailed statement of the factual history of her development of psychiatric conditions due to incidents involving her work. Appellant also submitted news articles about the murder-suicide incident. Additional statements were also submitted regarding the incident including one from B.M. Appellant also submitted a statement of C.G., a postal customer, who witnessed an angry man who was agitated towards appellant and a statement of T.C., a coworker, who observed appellant in an anxious and disoriented state after she was threatened by a customer.

In a June 26, 2014 statement, C.B., an employing establishment representative, asserted that appellant's claim should be denied. She explained that the customer had been upset with appellant, but she finished her route and had returned to work. C.B. also noted that appellant had informed A.M., a coworker, of her interactions with M.S. who she stated had sent her photographs

⁶ The employing establishment also submitted an unsigned and undated handwritten statement which alleged that the incident with the customer was a parking dispute and appellant handled the situation without his involvement.

of his penis and that stressed her out. She noted that appellant had not made complaints until after M.S. committed suicide.

In a Form CA-17 duty status report, dated July 30, 2014, Dr. Kaur noted that appellant's psychiatric condition was improving. An accompanying note indicated that appellant could return to work on August 11, 2014. On September 8, 2014 Dr. Kaur noted that her work should be limited to eight hours per day to avoid a relapse.

On October 21, 2014 OWCP received a statement from appellant explaining her difficulties following her return to work. Appellant also contested the statements of employing establishment personnel. In a supplemental statement, received on October 24, 2014, she noted examples of conflict she was experiencing in the workplace. A copy of a grievance form was also submitted.

By decision dated December 19, 2014, OWCP denied appellant's emotional condition claim, finding that the medical evidence of record was insufficient to establish that a medical condition arose during the course of employment and within the scope of compensable work factors. It found that there were no accepted events that were compensable factors of employment and, while the events involving M.S. occurred as alleged, they were not directed at appellant, nor did they involve appellant. OWCP found that the fact that appellant used to work with M.S. and knew at least one of his victims were not compensable factors of her federal employment. It further found that a postal customer had not verbally abused her on June 7, 2014 as alleged.

On January 15, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on July 16, 2015. Appellant submitted medical reports from Dr. Tullo Teresa, Board-certified in internal medicine, who noted that appellant should be excused from work.

On August 16, 2015 appellant's representative submitted new evidence including documents relating to criminal convictions of the postal customer who was alleged to have physically and verbally threatened appellant.

On August 28, 2015 the employing establishment submitted a September 13, 2013 Step B grievance decision which it asserted established that the working environment was safe for all employees.

By decision dated September 29, 2015, OWCP's hearing representative affirmed the December 19, 2014 decision.

On September 24, 2016 appellant, through her representative, requested reconsideration. By decision dated October 25, 2016, OWCP denied modification of the September 29, 2015 decision.

On October 17, 2017 appellant, through her representative, requested reconsideration of the October 25, 2016 decision. She advised that new evidence was submitted in support of the request for reconsideration. In an attached September 2, 2017 medical report, received by OWCP on October 17, 2017, Dr. Kaur opined that appellant's conditions were a result of the March 24, 2014 incident involving M.S. She further noted that appellant had a follow-up visit on May 15, 2017 during which she explained that she continued to be ridiculed and demeaned at work, causing additional trauma and exaggeration of her preexisting symptoms from PTSD. Dr. Kaur observed

that appellant was distraught and distressed during this visit. Counsel also set forth additional arguments in support of reconsideration. She cited to two cases which she alleged supported finding a compensable factor of employment based upon the aftermath of a traumatic event and a series of cases in which postal employees had been verbally assaulted by customers, which were found to be compensable employment factors.

By decision dated December 19, 2017, 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 compensation at any time on his or her own motion or on application.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits. 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.¹⁰

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 the reconsideration request dated October 17, 2017, appellant's representative cited to a series of Board decisions which she alleged supported the finding of compensable employment factors. The request included the representative's explanation as to why each case was applicable to the claimed factors of employment as were found factual. The Board finds that the representative's reconsideration request constitutes relevant legal argument not previously

⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁸ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ *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 (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁰ *Id.* at § 10.608(b); *A.G.*, Docket No 19-0113 (issued July 12, 2019).

considered by OWCP which was asserted to establish that OWCP erroneously applied or interpreted a specific point of law. It is relevant argument not yet addressed, thus denying appellant an opportunity to correct deficiencies, if any, in her claim. The Board therefore finds that appellant has established that OWCP improperly denied the request for a reconsideration of the merits of her claim based on the two initial requirements of 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant submitted new and relevant evidence in support of her October 17, 2017 request for reconsideration. OWCP failed to review Dr. Kaur's September 2, 2017 report, which was submitted with her request. In this new report, appellant's attending physician provides additional detail as to the nature and extent of appellant's psychiatric condition and her ability to interact with management at the employing establishment based upon the June 2014 incidents which are alleged as employment factors in this case. Thus, the Board finds that this attending physician's report constitutes relevant and pertinent new evidence under the third requirement of 20 C.F.R. § 10.606(b). Appellant's request for reconsideration therefore met the third standard for obtaining merit review of her case under 20 C.F.R. § 10.606(b)(3). Accordingly, she is entitled to a merit review of her claim.¹¹

The Board will therefore set aside OWCP's December 19, 2017 decision and remand the case for an appropriate merit decision on appellant's claim.

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 19, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 1, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *M.C.*, Docket No. 17-1983 (issued August 17, 2018); *S.H.*, Docket No. 17-1101 (issued August 3, 2017); *Helen E. Tschantz*, 39 ECAB 1382 (1988).