

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

M.R., Appellant)	
)	
and)	Docket No. 19-1449
)	Issued: March 11, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Everett, WA, Employer)	
)	

Appearances:
Howard L. Graham, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2019 appellant, through counsel, filed a timely appeal from a May 29, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated March 26, 2018, 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.

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.*

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 June 28, 2015 appellant, then a 54-year-old part-time flexible carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment including ongoing stress caused by incompetence, negligence, and malpractice by management and OWCP in the handling of a previous 2012 injury claim. She first became aware of her condition on February 20, 2015 and realized that it resulted from her employment on June 8, 2015. On the reverse side of the claim form, T.A, a customer services manager, indicated that appellant was last exposed to these alleged employment factors on July 3, 2015.

Appellant submitted two narrative statements where she related that her stress started with injuries that occurred on the job on January 18 and 20, 2012.³ She asserted that her supervisor had not initially given her an injury report to file and thereafter delayed turning in her completed report. Appellant described other mistakes by the employing establishment and OWCP regarding the processing of her claim. She explained that she underwent surgery for her injuries and that recovery was going to be a minimum of three months. Appellant noted that she had over 530 hours of sick leave and over 530 hours of personal leave. She alleged that she had previously discussed using her sick and personal leave while recovering from surgery and had submitted a "Form 3971" to her supervisor, but instead the employing establishment put her on leave without pay. Appellant expressed how stressful it was for her to deal with the payroll issue and the financial strain of not being properly paid for months. She reported that she was diagnosed with extreme anxiety in February 2015 and with post-traumatic stress disorder (PTSD) symptoms in March 2015.

In a July 21, 2015 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to the attached questionnaire in order to substantiate the factual element of her claim and provide additional medical evidence. OWCP afforded appellant 30 days to submit the necessary evidence.

On July 8, 2015 appellant completed the attached questionnaire. She explained that she underwent surgery for a torn labrum and hip impingement after January 18 and 20, 2012 work injuries. Appellant related that, while she was off work recovering from surgery, management failed to use her sick and annual leave. She reported that, every time she tried to resolve the issue, she experienced uncontrollable shaking, increased pain and irritability, extreme anxiety, and trouble sleeping. Appellant reported that her work and lack of income had been the only source of stress in her life and that she had not worked outside of the employing establishment. She

³ Under OWCP File No. xxxxxx381, appellant filed a traumatic injury claim (Form CA-1) alleging that she strained her left knee twice on January 18 and 20, 2012 when she slipped on ice when delivering mail while in the performance of duty. OWCP accepted her claim for left knee chondromalacia. It subsequently expanded acceptance of her claim to include left labral hip tear.

indicated that she had no other emotional conditions besides these events causing her anxiety and PTSD.

Appellant submitted: her pay slips dated February 13 to July 17, 2015; a January 24, 2015 Request for Absence form, which requested three months of Family and Medical Leave Act leave due to recovery from an injury; an illegible Request for Pay, Leave, or other Hours Adjustment; a position description for a city carrier; an August 10, 2015 patient chart note listing her active conditions; a grievance form dated June 3, 2015; and a list of paychecks that were incorrect.

In a July 2, 2015 letter, Dr. Antony S. Egnal, a Board-certified family practitioner, noted that in February 2015 he treated appellant for new symptoms of anxiety, situationally induced palpitations, irritability, sleep issues, and obsessive compulsive disorder type behavior. He indicated that she was having issues dealing with Labor and Industries and the employing establishment and opined that the symptoms were a direct result of having to deal with her claim. Appellant submitted additional reports dated February 20 to July 21, 2015 regarding Dr. Egnal's treatment for her depression, PTSD, and anxiety.

In a September 16, 2015 letter, H.G., an employing establishment health and resource management specialist, controverted appellant's claim. She alleged that appellant's anxiety and stress-related symptoms were a self-generated reaction to administrative procedures, and thus, not compensable under FECA.

By decision dated October 5, 2015, OWCP denied appellant's emotional condition claim finding that she had failed to establish fact of injury.

On October 27, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP subsequently received additional reports by Dr. Egnal dated January 14 to December 1, 2016. Dr. Egnal related that appellant continued to suffer from feelings of anxiety and being overwhelmed. He conducted an examination and diagnosed depression, acute flare-up of generalized anxiety disorder due to work stress, and PTSD. Dr. Egnal also completed duty status reports (Form CA-7) dated January 14 to March 7, 2016, which advised that appellant not return to work.

In a January 28, 2016 narrative report, Dr. Gary R. Snyder, a clinical psychologist, related that he had treated appellant since October 15, 2015 for ongoing anxiety and depression resulting from her workplace environment. He reported that she sustained two employment injuries in January 2012 and began to have difficulties with her management chain. Appellant had informed Dr. Snyder that her supervisor assigned her routes that required hours of walking, did not turn in injury paperwork in a timely fashion, intentionally delayed her accommodation requests, did not turn in corrected timesheets resulting in a lack of income, and would not provide assistance when she asked. Dr. Snyder opined that she suffered from PTSD due to a hostile work environment. He recommended three months of medical leave and completed a work capacity evaluation -- psychiatric/psychological conditions (Form OWCP-5a).

In a February 19, 2016 addendum report, Dr. Snyder indicated that appellant had given ample documentation regarding her January 2012 injury to the appropriate individuals at her work,

but management refused to help her and yelled at her in front of other employees. He indicated that she underwent psychological testing on October 15, 2015 and her results showed that she was extremely anxious and depressed. Dr. Snyder diagnosed PTSD and recurrent major depressive disorder. He opined that the cause of appellant's current anxiety and depression was due to her on-the-job accident.

Appellant submitted a February 22, 2016 letter to the employing establishment in which she explained that she was absent from work due to an occupational injury caused by a hostile work environment. She noted that her physician and clinical psychologist recommended that she take three months of medical leave and had submitted medical reports.

In addendum letters dated April 7 to May 19, 2016, Dr. Snyder reviewed appellant's history regarding the anxiety and depression she had experienced after the January 2012 job injuries. He reported diagnoses of PTSD and severe recurrent PTSD. Dr. Snyder opined that appellant's current anxiety and depression was due to her on-the-job accident and the way her recovery was handled by management. He indicated that she had experienced significant anxiety and grief from not getting paid in a timely manner and listed the pay periods for which she was not paid. Dr. Snyder also described various situations when appellant's supervisor caused appellant's ongoing emotional distress and anxiety. He also completed OWCP-5a forms dated April 7, 2016 to March 31, 2017, which indicated that appellant was significantly depressed and was not able to work.

In letters dated January 21 and 22, February 14, and May 16, 2017, appellant continued to describe situations where management annoyed, intimidated, and refused to help her. She also asserted that, after she returned to work, she became the victim of workplace bullying by T.A. and D.W., a supervisor. Appellant related that she was placed on routes that she was not familiar with, was not allowed the usual time to get to know these routes, was forced to work beyond her work restrictions, and was refused assistance in accomplishing her duties. She also reported that she was attaching documentation which showed that her initial Form CA-2 was tampered with by management. Appellant submitted copies of her Form CA-2, the narrative statement she included with her Form CA-2, and various Request for or Notification of Absence forms for the period March 12 to June 24, 2016.

OWCP also received an Equal Employment Opportunity (EEO) Investigative Affidavit and various Step A Grievance Forms regarding incidents on May 18, July 28, August 10, and November 4, 2015 when management failed to honor a regular schedule for her. Appellant included narrative statements and union steward notes regarding these grievances.

On September 12, 2017 a telephonic hearing was held. Counsel was present. Appellant reiterated her previous allegations that she suffered from anxiety and stress due to harassment from management. She reported that she prevailed on nine of the grievances against management. Appellant also explained that in July 2015 she was assigned to a new all-walking route. She asserted that she had difficulty learning and completing the route and that when she requested assistance management yelled at her and refused to help her.

In a September 25, 2017 narrative report, Dr. Snyder noted that appellant's recent clinical scales demonstrated that she was experiencing more emotional distress and turmoil than when tested in October 2015.

In a September 26, 2017 letter, counsel alleged that appellant had provided sufficient evidence to establish fact of injury. He cited to various cases to support his contention that grievance settlements and difficulty with supervisors, if sufficiently detailed, could constitute error or abuse on the part of management. Counsel also asserted that delay of pay and overwork were considered compensable employment factors.

By decision dated November 20, 2017, an OWCP hearing representative affirmed the October 5, 2015 decision finding that appellant had not established a compensable employment factor for her emotional condition claim as her response to management's actions were self-generated.

On January 2, 2018 appellant requested reconsideration. In a December 27, 2017 narrative statement, she clarified several points about OWCP's November 20, 2017 hearing representative decision. Appellant alleged that she had submitted proof of all the harassment and bullying at work by management. She quoted several regulations from the Employee Rights and Responsibilities handbook and alleged that management failed to follow standard operating procedure in handling her workers' compensation claim and use of her sick leave.

By decision dated March 26, 2018, OWCP denied modification of the November 20, 2017 hearing representative decision.

Following the decision, in a January 16, 2019 report by Dr. Roopa Bhat, a Board-certified neurologist, who treated appellant for complaints of left-sided facial pain, loss of appetite, fatigue, anxiety, depression, and trouble sleeping. She reviewed appellant's history and opined that appellant's stress had increased lately due to a lawsuit for a work-related injury. Dr. Bhat conducted an examination and diagnosed left facial pain with probable migraine.

In a January 17, 2019 letter, Dr. Snyder reported that the hostile treatment and work environment that appellant experienced from her supervisors and management since the January 2012 job injury had directly led to her ongoing depression and anxiety. He described the January 2012 injuries and the subsequent problems she had regarding the filing of her claim and incorrect paychecks. Dr. Snyder further reported that, for the past seven years, appellant had dealt with extreme pain in her left knee, hip, and leg and had to work a physically demanding job while her medical treatment was denied and delayed.

Dr. Snyder also noted that appellant experienced a great deal of frustration and stress because she was unable to meet the production standards at work and was unable to finish her route within the time allotted due to her hip and knee injuries. He indicated that she also attributed her stress to traffic problems on her route, difficulties parking, delays due to road construction, and attempting to timely scan parcels. Dr. Snyder also described how appellant lost her regular route in mid-July 2015 and had to do an all walking route, even though she was not medically cleared for continuous walking. He also explained that, because the new routes were unfamiliar, they took longer than eight hours to complete, which caused further physical and emotional pain

and suffering. Dr. Snyder indicated that appellant's anxiety and stress over her inability to perform her job duties in a timely manner were exacerbated by a series of late and incorrect payroll checks issued by management. He opined that she sustained PTSD and severe depression during the course of her employment and within the scope of compensable work factors as defined by FECA. Dr. Snyder listed the compensable work factors to include regular and specially assigned work duties, overwork, altercations/difficult relationships with supervisors if documented, erroneous or abusive personnel actions, requirements of employment, and dispute with origin in the workplace.

On March 17, 2019 appellant, through counsel, requested reconsideration. Counsel asserted that he was submitting new evidence, including an August 3, 2018 grievance decision, an OWCP decision accepting her claim for a left hip injury, and a new medical report from Dr. Snyder with new information supporting his opinion on causal relationship. He further contended that OWCP had erroneously applied or interpreted a point of law, specifically that emotional conditions can be caused by situations in which an employee is trying to meet his or her position requirements. Counsel cited to the case of *Lillian Cutler*⁴ and asserted that when an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out those duties and the medical evidence establishes that disability resulted from his or her reaction to such scenario, that injury is considered to arise out of and be in the course of employment. He also alleged new legal arguments that multiple errors in delaying payments, making incorrect payments, errors assigning work duties, and administering personnel rules constituted unreasonable error by management. Counsel further asserted that subjective complaints of pain were compensable when related to physiological tissue damage. Lastly, he argued that appellant's current claim should be doubled with OWCP File No. xxxxxx381.⁵

OWCP received decisions from the employing establishment's dispute resolution team. According to a March 11, 2014 decision, the dispute resolution team determined that management violated appellant's opting rights when they did not schedule her to her regular work schedule and denied her contractual right to begin her tour at 8:00 a.m. from December 9 through 21, 2013. In an August 3, 2018 decision, the employing establishment's dispute resolution team found that sections of her Standard Form 3112B were improperly filled out by management and contained false and misleading information.

Appellant submitted a September 1, 2017 letter from the Office of Personnel Management which denied her application for disability retirement and the December 17, 2018 letter which overturned the September 1, 2017 denial letter and approved her for disability retirement due to major depression. She also provided narrative statements dated December 10, 2015 and June 22, 2016 describing the harassment she experienced from management. Appellant additionally submitted a timeline of events from April 16, 2005 to January 3, 2019 regarding her job-related injuries and a summary of grievances that resolved favorably for her. She also submitted the January 30, 2015 left hip surgery operative report and additional medical reports from 2014 regarding medical treatment for her left hip condition.

⁴ 28 ECAB 125 (1976).

⁵ See *supra* note 3.

OWCP received an unsigned June 9, 2015 letter from T.A., the Postmaster, who apologized for the inconvenience in appellant's pay issues. It also received pay adjustment certification forms for pay periods 15-04, 15-05, 15-14, and 15-15. OWCP received a December 17, 2015 EEO investigative affidavit from D.S., appellant's supervisor.

By decision dated May 29, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim under 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. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.⁶

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.⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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 appellant's March 17, 2019 request for reconsideration, counsel cited to *Lillian Cutler* and argued that OWCP failed to address whether appellant's alleged emotional

⁶ 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).

⁷ 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).

⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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 (iFECS). Chapter 2.1602.4b.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

condition resulted from her specific employment duties or from fear and anxiety regarding her ability to carry out those abilities. The Board finds that counsel's argument is a new legal argument relevant to the underlying issue of whether appellant had established a compensable employment factor under FECA. In narrative statements dated January 21 and 22, 2017 and during the September 12, 2017 telephonic hearing, appellant explained that after she returned to work she was placed on unfamiliar routes, did not have adequate time to learn these routes, and was refused assistance in accomplishing her duties. OWCP, however, did not address these employment conditions in its previous decisions. As counsel advanced legal argument relevant to appellant's claim which was not previously considered by OWCP, such argument warrants further merit review.¹¹

Along with her reconsideration request, appellant also submitted relevant and pertinent new evidence not previously considered by OWCP. She provided decisions dated March 11, 2014 and August 3, 2018 from the employing establishment's dispute resolution team, which found in her favor against management. The Board finds that these decisions by the employing establishment's dispute resolution team address the issue of whether the employing establishment acted reasonably, and accordingly, constitutes relevant and pertinent new factual evidence related to the underlying issue in this claim.¹²

Appellant also provided a new medical letter dated January 17, 2019 by Dr. Snyder. Dr. Snyder related that she became frustrated and stressed because she was unable to meet the production standards at work and was unable to finish her route within the time allotted due to her hip and knee injuries. He indicated that appellant also attributed her stress to traffic problems on her route, difficulties parking, delays due to road construction, and attempting to timely scan parcels. The Board finds that Dr. Snyder provided new details regarding how her specific employment duties caused or contributed to her diagnosed conditions.¹³ Accordingly, Dr. Snyder's report constitutes pertinent new and relevant medical evidence. Thus, appellant is entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).¹⁴

The case will therefore be remanded for OWCP to conduct a merit review of the claim, to be followed by an appropriate merit decision.

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).

¹¹ See *D.K.*, Docket No. 19-0637 (issued December 11, 2019); *D.M.*, Docket No. 16-1754 (issued January 10, 2018).

¹² See *W.S.*, Docket No. 12-0992 (issued February 7, 2013).

¹³ See *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

¹⁴ *H.H.*, Docket No. 18-1660 (issued March 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2019 nonmerit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 11, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board