

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 January 27, 2014 appellant, then a 56-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition when she was the subject of a "hasty, vicious attack on her character and livelihood *via* defamation in termination without cause" due to factors of her federal employment. She noted that she first became aware of her emotional condition and realized its relation to factors of her federal employment on February 7, 2011.

In an attached statement, appellant provided a timeline of events regarding her removal from the employing establishment. She indicated that on December 31, 2010 she was served with a "Letter of Removal" from the employing establishment. Appellant related that she initiated an Equal Employment Opportunity Commission (EEOC) investigation on January 9, 2011, and filed a grievance through her union on January 11, 2011. She reported that on February 7, 2011, she was returning from delivery route when E.M., a supervisor, informed her that she needed to collect her personal belongings and be escorted off the premises. Appellant noted that she immediately felt "butterflies" in her abdomen and was light headed. She explained that her heart was racing and that she could hardly catch her breath when she collected her belongings. Appellant described the process she followed over the next few months in filing grievances through her union office and with the EEOC and how her illness compounded. She noted that in April 2011, she accepted a pre-arbitration offer to return to work, but was approved for Family and Medical Leave Act (FMLA) sick leave due to her severe depression. Appellant reported that she returned to work on June 21, 2011, but continued to experience problems with management. She described specific incidents from June 28, 2011 to December 9, 2013, where she felt threatened or harassed by her supervisors through the grievance process or while at work.

Appellant submitted a January 27, 2014 statement, describing the negative and hostile thoughts she had experienced since her wrongful termination and removal from the premises in February 2011. She also explained that she had previously experienced post-traumatic stress disorder (PTSD) in 1992 and 1993 and described those situations.

OWCP also received an April 15, 2011 pre-arbitration settlement agreement, an April 30, 2011 Notice to Report to Work letter, and a list of appointments from her medical provider.

In a January 22, 2014 work status note, Dr. Yvonne Monroe, a Board-certified psychiatrist and neurologist, requested that appellant's leave of absence from work be extended from January 10 to July 15, 2014, because her PTSD had "worsened to moderate to severe and being at the workplace would be further traumatizing."

In a February 12, 2014 letter, S.R., an injury compensation health and resource management manager, controverted appellant's claim alleging that appellant's reaction to an administrative issue was self-generated and not covered under FECA.

In a March 24, 2014 decision, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that appellant actually experienced the alleged employment factors. It explained that there was no evidence to corroborate the specific employment incidents that appellant claimed caused or contributed to her alleged emotional condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 23, 2014 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 13, 2014.

On May 2, 2015 OWCP received appellant's completed development questionnaire dated March 21, 2014, and various witness statements from appellant's coworkers. In a March 12, 2014 statement, E.R. recounted that after appellant returned to work in July 2011, she was subjected to wrongful accusations that she was hiding or not on her mail route. In a March 12, 2014 letter, M.D. reported that during the summer of 2011 there were ongoing confrontations between appellant and Acting Supervisor, K.B. In a March 12, 2014 letter, J.F. noted that on or about mid-July 2011 he observed Acting Supervisor, K.B., yell at appellant on several occasions and accuse her of hiding on her route. In a September 15, 2014 statement, J.F. indicated that on February 7, 2011 he observed appellant being escorted through an "employees only" door.

Appellant also submitted a letter of reference from J.C., a former supervisor, and a February 17, 2014 statement that provided a detailed description of her work duties when delivering mail.

OWCP received various documents from the employing establishment, including a December 10, 2010 city route inspection form; a December 27, 2010 Notice of Removal letter; a June 20, 2013 Letter of Warning; and a February 4, 2014 Notice of Unexcused Absence letter.

Appellant additionally submitted documents related to her EEOC investigation and union grievances, including: requests for official time dated December 8, 10, 11, and 31, 2010; a January 11, 2011 Form 1260, which she alleged showed that she did not take lunch on that day; an October 12, 2011 letter by appellant describing violations of the by-laws and union constitution; and a July 3, 2012 Brief in Opposition to appellant's petition.

Appellant also provided medical evidence, including hospital records dated December 11 through 12, 2013; a January 5, 2012 Certification of Health Care Provider for Employee's Serious Health Condition form; and a March 10, 2014 letter by Dr. Monroe.

By decision dated January 29, 2015, OWCP's hearing representative affirmed the March 24, 2014 decision, with modification. She determined that fact of injury had been established, but denied the claim finding that appellant had not established any compensable employment factors under FECA.

On February 1, 2016 appellant requested reconsideration. She alleged that the facts in the hearing representative's decision were inaccurate and provided corrections. Appellant also asserted that she was initially informed that she did not need to upload additional information for the hearing and noted that she had problems getting mail and evidence to OWCP. She submitted leave calendar print outs for 2013 through 2015.

In a March 20, 2016 statement, appellant requested that OWCP specify what evidence was needed to establish her claim. She alleged that she was trying to the best of her ability to meet their demands and she believed that she was understanding her request.

OWCP also received several medical reports by Dr. Monroe, including a Certification of Health Care form dated December 4, 2002; a January 2, 2003 work status note; a November 12, 2014 letter; and an April 30, 2015 work status note.

In an April 29, 2016 decision, OWCP denied modification of the January 29, 2015 decision.

On April 28, 2017 appellant requested reconsideration. She alleged that she finally received a small amount of paperwork that was directly related to her wrongful termination. Appellant asserted that her story was true and she believed that she was submitting the necessary evidence.

In a May 25, 2017 statement, appellant explained that the paperwork she was submitting was to show the type of employee that she started out to be and hoped to become. She asserted that she sought to be the best worker she could possibly be, but the employing establishment was determined to discredit her.

Appellant submitted a copy of Article 16 of the contract between the union and employing establishment dated July 2014 and noted the portions of the contract that she contended were violated by the employing establishment. She also provided a November 17, 2014 National Labor Relations Board charge against employer form dated November 17, 2014.

OWCP received additional employing establishment forms and documents related to appellant, including a timesheet dated for January 26 to February 26, 2010; daily performance worksheets dated November 27 to December 4, 2010; leave calendars for 2013, 2014, and 2015; an April 16, 2014 request for records information; a May 5, 2014 letter informing appellant that she had been on leave without pay (LWOP) status for more than 30 days; a May 5, 2014 employing establishment Notice of Personnel Action (PS Form 50); a March 18, 2015 Notice of Change in Health Benefits form; a March 25, 2015 Federal Employees' Group Life Insurance Program notice of conversion form; a March 25, 2015 PS Form 50; a March 25, 2015 letter informing appellant that her life insurance coverage had been terminated; and an April 13, 2015 PS Form 50. OWCP also received appellant's birth certificate and a North Carolina death certificate for appellant's father.

Appellant additionally submitted various documents dated from 1980 to 1992, including: record of training forms dated April 15, 1980 and July 2, 1981; an August 5, 1981 commendation letter; a January 5, 1983 commendation letter; a May 20, 1985 commendation letter and Special Achievement Award; a December 28, 1988 commendation letter; an August 24, 1989 Federal Health Benefits election form; a November 22, 1989 PS Form 50; a December 18, 1989 authorization to deduct dues; and a work status note, which indicated that appellant was a patient at a health care facility from August 17 to September 1, 1992.

In a June 21, 2017 letter, A.K., a registered nurse, indicated that the employing establishment had initially challenged appellant's claim on February 12, 2014. She contended that the employing establishment continued to be of the opinion that appellant's "feelings or perception

of instruction, direction, or discipline within the workplace did not substantiate an injury or illness.”

By decision dated July 21, 2017, OWCP denied modification of its April 29, 2016 decision.

On July 23, 2018 appellant requested reconsideration.

In a July 13, 2018 letter, appellant alleged that she still suffered symptoms from her previous injury. She noted that she was not able to see a current medical professional due to lack of insurance and short-term memory problems. Appellant also indicated that she had not received documentation from her former OWCP claim regarding a past diagnosis, which was directly related to this claim.

By decision dated July 27, 2018, OWCP denied appellant’s reconsideration request. It found that her reconsideration request was untimely filed and failed to demonstrate clear evidence of error.

Appellant filed an appeal with the Board. In a July 26, 2019 order, the Board set aside the July 27, 2018 OWCP decision and remanded the case for OWCP to review appellant’s July 23, 2018 reconsideration request under the proper standard for a timely reconsideration request pursuant to 5 U.S.C. § 8128(a).⁴

By decision dated August 27, 2019, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that her July 13, 2018 reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

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 own motion or on application.⁵

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.⁶

⁴ *Order Remanding Case*, Docket No. 19-0639 (issued July 26, 2019). The Board explained that because one year from OWCP’s July 21, 2017 merit decision was on a Saturday, July 21, 2018, the period extended to the next business day, which was Monday, July 23, 2018, thereby rendering appellant’s request as timely filed.

⁵ 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).

⁶ 20 C.F.R. § 10.606(b)(3); *see J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, 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

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).

With her July 23, 2018 request for reconsideration, appellant submitted a statement alleging that she still suffered symptoms from her work-related injury and was gathering evidence to establish her claim. Appellant's reconsideration request does not advance a new legal argument not previously considered nor show that OWCP erroneously applied or interpreted a specific point of law. The Board finds that the argument made by appellant on reconsideration was cumulative, duplicative, or repetitive in nature and was insufficient to warrant reopening the claim for merit review.¹⁰ Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

Furthermore, the Board finds that appellant submitted no new evidence in support of her request for reconsideration.¹² Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).¹³

The Board accordingly finds that appellant did not meet 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.¹⁴

⁷ *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.

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017).

¹¹ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

¹² *See F.D.*, Docket No. 19-0890 (issued November 8, 2019).

¹³ *T.M.*, Docket No. 19-0535 (issued July 25, 2019).

¹⁴ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

On appeal counsel argues that appellant had submitted sufficient evidence to establish her emotional condition claim. As noted above, however, the Board does lacks jurisdiction over the merits of the claim.¹⁵

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 August 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *Supra* note 3.