



## 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 July 26, 2016 appellant, then a 53-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2016 she lost consciousness and was found face down on the floor while in the performance of duty. She indicated that her work environment was hostile, and that when two supervisors presented multiple memoranda for record (MFR) that day, she blacked out and fell face down onto the floor.

In a July 13, 2016 statement, L.H., appellant's second-line supervisor, wrote that on the morning of July 13, 2016 she and T.S., a labor relations officer, and appellant's first-line supervisor, met with appellant and discussed various issues regarding her substandard work and what she would need to do to improve. She indicated that she had several documents she had referenced, and made a table of contents referencing the items, provided appellant with a copy of the materials, and requested that she sign on the table of contents as a receipt for the items. L.H. reported that appellant told her that she was "killing" her and L.H. responded that she was only requesting a signature for the items received and appellant again said that L.H. was "killing" her, then proceeded to throw her arms to her sides, slide off her chair onto the floor, and lay face down in the carpet. She indicated that appellant had her arms outstretched in a cross position with her legs straight behind her, and that she was breathing extremely heavy with her head turned to the left. L.H. indicated that she then rubbed appellant's back and arms, told her to take a deep breath, and to try to calm down. She reported that a summer intern briefly came into the office advising that she was an emergency medical technician (EMT), and L.H. told the summer intern that EMTs had been called, and they arrived soon and began assistance. L.H. maintained that appellant was never unconscious and was awake when the EMTs left with her.

In a development letter dated August 12, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It informed her of the additional factual and medical evidence necessary and provided a questionnaire for her completion regarding the factual elements of her claim. OWCP afforded appellant 30 days to submit the necessary evidence. In a letter of same date, it asked that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's statements.

In correspondence dated August 17, 2016, P.B., an injury compensation specialist with the employing establishment, controverted the claim. He noted that appellant had not provided any medical documentation. P.B. also noted that appellant's supervisor had provided a fraud checklist with several fraud indicators checked, and that appellant had pending disciplinary action for her work performance.

Additional evidence submitted included a July 13, 2016 response report from the employing establishment's emergency medical service. A paramedic provided a history that appellant was attended by emergency personnel and was partially responsive. The paramedic wrote that appellant reported that she was stressed at work, that she lay down when she started

feeling lightheaded, that she did not hit her head, and that she had no pain, but tingling in her arms. An unsigned emergency department pre-hospital care report dated July 13, 2016 indicated that appellant was actively seizing and convulsing on arrival and was not responsive. On a form report dated July 13, 2016, Rebecca Bryant, an emergency department nurse, noted a chief complaint that appellant lost consciousness and that a precipitating factor was stress. Dr. Erin Mai, an osteopath Board-certified in emergency medicine, described examination findings. Her clinical impression was seizure.

In a July 16, 2016 treatment note, Dr. Suzanne Hawkins, an osteopathic physician, noted that appellant complained of stress over the last three months when she was discriminated against by her bosses, and that she sustained possible seizure activity on July 13, 2016. She diagnosed unspecified convulsions, insomnia, and anxiety disorder. On July 19, 2016 Dr. Hawkins reported that appellant had no further seizure activity, but that she did not want to return to work.

Brianne E. Henry-McAllister, Psy.D., a licensed clinical psychologist, saw appellant on July 21, 2016 for a complaint of anxiety and stress. She noted a history that appellant passed out at work after a discussion with her supervisor, and indicated that testing revealed severe anxiety and moderate depression and recommended anxiety intervention techniques and medication.

In a July 22, 2016 report, Dr. Emily Reynolds, an osteopathic physician Board-certified in neurology and clinical neurophysiology, reported a history that on July 13, 2016 appellant was having a stressful day at work and that the last thing she remembered was typing and turning to face a coworker, and then awakened in an ambulance. She reported that there may have been associated convulsive events with the loss of consciousness. Dr. Reynolds diagnosed syncope, unspecified convulsions, hypertension, depression/anxiety, and insomnia with excessive daytime sleepiness and recommended a brain magnetic resonance imaging (MRI) scan and a cardiac work-up.

On August 16, 2016 Dr. Heather Jones, a Board-certified family physician, reported that she had treated appellant for years and that appellant was seen after passing out at work during a very stressful workday. She indicated that appellant related that after she was assigned a new supervisor, she was excessively persecuted and her supervisors had written her up on the day she passed out. Dr. Jones diagnosed unspecified syncope, stressful workplace, adjustment insomnia, and hyperkalemia.

On August 31, 2016 Dr. David J. Shaw, a Board-certified internist and cardiovascular disease specialist, noted that appellant reported that she became very stressed at work because she had been written up for a third time, and when her boss tried to have her sign a document she became very stressed and lost consciousness. He opined that appellant's history was not consistent with cardiogenic syncope and advised that no further cardiac work up was required for possible syncope.

In a September 9, 2016 report, Megan Gruhl, a licensed counselor, advised that, due to appellant's hostile work environment, she should not return to work.

T.S. submitted an undated statement in which she indicated that she met with appellant in the early afternoon of July 13, 2016 regarding her conduct and events of July 11 and 12, 2016,

which she documented in an MFR. She related that appellant became upset. T.S. wrote that she stopped the conversation at that point, and when she asked appellant if she had any questions, appellant stated she did not agree and wanted a copy of the MFR. She related that she told appellant that she should be aware of employing establishment procedures and she would receive a copy upon signing the entry, but that appellant stated she would not sign the form so that she annotated the form and made a copy for appellant. T.S. indicated that approximately one hour later, when she heard very loud moaning noises as if someone was gasping for air, she left her office and met S.R., a coworker, who indicated that she was calling 911 for appellant and that L.H. was with appellant. She indicated that she followed S.R. to the front office and continued to hear appellant making loud noises as if she was having difficulty breathing, and then went to the front of the building to direct the ambulance. T.S. related that the ambulance arrived shortly and she showed the EMTs upstairs, but did not enter the office. She noted that shortly thereafter appellant was taken to the hospital.

In a statement dated August 12 and signed on September 11, 2016, appellant indicated that from July 11 to 22, 2016 she was the person of contact (POC) for a federal wage survey team with duty hours from 8:00 a.m. to 4:30 p.m. She indicated that on July 13, 2016, while performing POC duties, her first-line supervisor, T.S., called her away and presented memoranda to her. Appellant maintained that the timing and manner of presenting the memoranda by both her first and second-line supervisors were hostile, demeaning, disrespectful, unwarranted, abusive, overwhelming, and life threatening. She wrote that they spoke in an accusatory tone, made false accusations, and the events appeared hostile, stressful, and overwhelming such that she felt attacked. Appellant noted that she had previously spoken with the squadron deputy commander concerning unfair treatment she had received from the supervisors, and maintained that the write-ups presented on July 13, 2016 were issued in reprisal. She also indicated that T.S. had changed her schedule without notice, which prevented her from having a lunch break, and added housekeeping tasks that were not in her job description, and that L.H. refused to give her the opportunity to read the last write-up, but badgered her to sign it. Appellant indicated that she had no prior history of blacking out, and that she remembered nothing from turning until she woke up in the emergency room. She discussed her past performance including a training issue and problems with Microsoft Word. Appellant disputed the contents of the second memorandum, which accused her of being disrespectful on July 11, 2016, and four minutes late on July 12, 2016. She indicated that she did not know the reason for the third MFR because she was not given the opportunity to read it, alleging that L.H. just badgered her to sign in, and then she blacked out. Appellant noted that there was no stress outside of work and that she had never received treatment for an emotional condition.

By decision dated September 16, 2016, OWCP denied appellant's claim. It found that the evidence of record did not establish that the incident occurred, as alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 14, 2017 appellant requested reconsideration. In a September 10, 2017 letter, she noted that T.S. became her supervisor in September 2015 and, beginning in February 2016, began treating her differently than her coworkers who were Caucasians whereas she was African-American. Appellant described incidents from March 22, 2016 to the claimed date of injury on July 13, 2016. She provided a lengthy description of the events of that day, beginning at 9:30 a.m. when T.S. summoned her to L.H.'s office for counselling regarding

problems with a performance improvement plan (PIP) for an employee and software templates used. Appellant wrote that she felt that her integrity was being questioned and that the tenor of the meeting was hostile. She indicated that at the end of the discussion, L.H. presented her with the first write-up and told her that she could possibly be placed on a PIP in the future, which disturbed appellant. Appellant alleged that she had been interrogated and falsely accused for an hour when she should have been at the wage survey conference and that the MFR given at that time falsely stated her performance, questioned her integrity, and assassinated her character. She reiterated that T.S. had improperly changed her work schedule, and that she was bullied by T.S. and L.H. by being presented with three write-ups within an hour and thirty minutes. Appellant wrote that L.H. brought her a copy of the first MFR and presented a third MFR and asked her to sign. She indicated that she was in the middle of writing an e-mail and asked to be allowed to finish and that she was also upset because she had received a second MFR from T.S., but that L.H. told her again to sign the MFR. Appellant related that she told L.H. that she would like to read it first, but that L.H. began badgering her to sign it. She also maintained that T.S. created a hostile and stressful environment when she presented the second MFR. Appellant indicated that she had returned to work on November 8, 2016 at a different employing establishment location, but that on March 20, 2017 was returned to her previous office, and on her first day there, T.S. attacked her and denied a leave request for a medical appointment. She wrote that on March 23, 2017 she learned that her Hodgkin's lymphoma had returned, and that she took a different job on May 26, 2017. Appellant had subsequently moved from Alaska to Alabama.

In support of her reconsideration request, appellant submitted a witness statement dated July 13, 2016 in which S.R., a coworker, indicated that on that day she witnessed appellant collapsing in her office and immediately called 911 to request medical assistance. S.R. indicated that appellant had cried out and collapsed face down on the floor in her office. She indicated that appellant was unconscious with her limbs in a stiff, locked position, that she was gasping for air, sweating profusely, that her nose was draining fluids, she was foaming at the mouth, and her eyes rolled back in her head. S.R. advised that appellant's body continued to convulse out of control on her office floor as L.H. held her in her arms crying over her saying, "breathe, please breathe" until the paramedics arrived to care for her. She opined that it looked like appellant may have been having a seizure, heart attack, and/or a stroke.

Medical evidence submitted included an October 12, 2016 report in which Dr. Shaw indicated that appellant was being seen for additional testing. On October 24, 2016 Dr. Shaw reported that appellant was doing well, and advised that her single episode of syncope without recurrence was most consistent with vasovagal or situational syncope "given the extreme stress she was under." He noted that appellant's cardiac tests were normal and that she did not require further cardiovascular evaluation.

In an October 13, 2016 report, Dr. Reynolds indicated that appellant was seen for follow-up following an episode on July 13, 2016. She advised that appellant had no repeat episodes of loss of consciousness or lightheadedness, but continued to experience anxiety and was undergoing a cardiac work up.

Dr. Jones completed a Family and Medical Leave Act (FMLA) certification of health provider form on November 7, 2016. He advised that appellant was released to work that day in a different work environment, should have no contact with previous coworkers, and that she

continued to need weekly medical appointments for her ongoing post-traumatic stress disorder (PTSD) type symptoms.

On September 13, 2017 Ms. Gruhl reported that appellant was her client from July 2016 through May 2017. She opined that because of appellant's intuitive nature in which she delivered compassion and care in her work as a human resources professional, that the hostile work environment she experienced caused anxiety and depression. Ms. Gruhl indicated that it was her professional opinion that appellant needed a full year of therapy to repair and support her.

By decision dated December 13, 2017, OWCP denied modification of its September 16, 2016 decision.

On December 12, 2018 appellant requested reconsideration. In an attached statement, she asserted that L.H. abused her authority by pressuring her to sign an MFR without reading it, causing her to lose consciousness. Appellant cited to Board precedent in support thereof.

By decision dated January 11, 2019, OWCP denied appellant's request for reconsideration of the merits of appellant's claim under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>3</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>4</sup> 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.<sup>5</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that 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.<sup>6</sup> When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.607.

<sup>5</sup> *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 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.

<sup>6</sup> *Id.* at § 10.606(b)(3); *see B.R.*, Docket No. 19-0372 (issued February 20, 2020).

<sup>7</sup> *Id.* at § 10.608.

### 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 December 12, 2018 reconsideration request, appellant submitted a statement wherein she asserted that L.H. abused her authority by pressuring her to sign an MFR without reading it, causing her to lose consciousness. 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.<sup>8</sup> Therefore appellant has not shown that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. As such, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>9</sup>

Further, appellant has not provided relevant and pertinent new evidence in support of her request for reconsideration. As such, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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.<sup>11</sup>

### 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).

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<sup>8</sup> See *T.B.*, Docket No. 16-1130 (issued September 11, 2017).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3).

<sup>10</sup> *Id.* at § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

<sup>11</sup> *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

**ORDER**

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

Issued: October 9, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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