

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

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2015 appellant, then a 53-year-old financial management technician, filed an occupational disease claim (Form CA-2) alleging depression, anxiety, irritable bowel syndrome, spastic ataxia, back pain, leg fatigue/weakness, and vertigo, which she attributed to her work environment. She alleged that she first became aware of her claimed conditions on January 1, 2013 and first realized their relation to her federal employment on February 15, 2014. Appellant stopped work on March 12, 2015, and returned to work at her previous employment on April 7, 2015 with no change in her duties/assignments.

In addition to the Form CA-2, OWCP received a description of the financial management technician position, as well as a December 4, 2011 notification of personnel action form (Standard Form 50-B) memorializing a within-grade increase, effective December 18, 2011.

In a June 25, 2015 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It explained the basic elements for entitlement to FECA benefits, and noted that she had not provided a description of the employment factors she believed caused her alleged emotional and physical conditions. Additionally, OWCP noted that appellant had not provided medical documentation from her physician to support the existence of her claimed emotional and/or physical conditions. It afforded her 30 days to submit the requested factual and medical evidence.

On August 18, 2015 OWCP received an undated 28-page statement in which appellant provided an extensive discussion of the stressful incidents and conditions at work that she believed had caused her to sustain the medical conditions delineated on her Form CA-2. Appellant indicated that she sustained employment-related stress beginning on March 3, 2009 when she started working under a new immediate supervisor in the financial section work unit. She asserted that, since that time, her supervisor unfairly harassed her regarding various work matters, including criticizing the wording she used in work documents, without providing her adequate training or guidance on how to carry out her work assignments. Appellant claimed that her supervisor scrutinized her work more closely than that of other employees and that she issued her improper performance appraisal ratings beginning in 2009. She asserted that on March 4, 2009 another supervisor committed harassment by yelling at her in the presence of other employees. Appellant further asserted that in October 2011 management improperly failed to consider her for promotion. She described several instances in February and March 2012 when she believed that a coworker unfairly criticized her work product, including her choice of the wording of e-mail

³ Docket No. 16-1690 (issued September 7, 2017).

communications. Appellant alleged that on October 12, 2012 her supervisor made untrue statements about her work performance in connection with a work appraisal rating and improperly denied her request on that date to leave the office and take sick leave.

Appellant further alleged that on November 28, 2012 her supervisor unfairly criticized the manner in which she prepared e-mail communications. She indicated that on October 31, 2013 her supervisor gave her feedback regarding a performance appraisal rating which she felt was unwarranted. Appellant alleged that her supervisor told her that no one wanted to promote her. On November 13, 2013 she became emotional and left the office because her supervisor told her that a coworker was frustrated about continuing to receive documents faxed from her physician. Appellant claimed that on March 7, 2014 her supervisor unreasonably told her that she should not spend time on training despite the fact that she felt it was necessary for her job. She indicated that on March 8, 2014 her supervisor advised her that she could not take any leave until she built up leave again. Appellant claimed that she was the only person who was monitored by this supervisor for leave usage. She claimed that on July 2, 2014 her supervisor unfairly criticized her by advising her that a coworker had complained that she “didn’t know what [she] was doing” with respect to a work matter. Appellant further asserted that on September 4, 2014 another supervisor laughed at her when she mentioned taking sick leave in a manner which suggested she believed that she was “faking” her need to take sick leave. She alleged that on October 29, 2014 her supervisor wrongly accused her of slamming a door on an earlier occasion. Appellant indicated that on April 10, 2015 her supervisor interrupted her while she was receiving guidance on a work task from a coworker.

Appellant also submitted numerous reports from health care providers. In a September 3, 2014 report, Dr. Panduranga Kini, a Board-certified psychiatrist, provided an impression of “anxiety type of symptoms.” In an April 15, 2015 report, Byron Loy, a licensed clinical professional counselor, noted that appellant reported experiencing anxiety due to a supervisor who was a “bully and a micro manager.” On October 8, 2015 Dr. Steven D. Pritchett, Board-certified in family medicine, indicated that appellant reported experiencing stress from work and was being treated by a psychiatrist for depression, anxiety, and panic disorder.

In a February 16, 2016 letter, OWCP again requested that appellant submit additional factual and medical evidence in support of her claim. It acknowledged receipt of her August 18, 2015 response, as well as medical documentation, however, it indicated that the submitted information was insufficient to support her claim. The enclosed questionnaire included a description of eight alleged employment incidents from November 2013 through October 2014. OWCP advised appellant to submit evidence to support her allegations, including witness statement from anyone who could verify her allegations. It also requested that she submit copies of grievances and/or equal employment opportunity (EEO) complaints that were filed with respect to the alleged working conditions. OWCP again afforded appellant 30 days to submit the requested information.

Appellant subsequently submitted several witness statements from early-2016 in which coworkers discussed their observations about her interactions with supervisors and other employees. She also submitted documents concerning an EEO claim she filed with respect to some of her claimed employment factors. The documents included a copy of an unsigned “EEO

Settlement Agreement.” In an undated document received by OWCP on March 3, 2016, appellant discussed the medical treatment of her stress-related conditions.

Appellant also submitted additional medical evidence, including an August 24, 2015 report from Dr. Jeffrey S. Chalfant, an osteopath Board-certified in psychiatry, who diagnosed major depressive disorder (single episode, moderate degree), and unspecified anxiety state.

By decision dated March 22, 2016, OWCP denied appellant’s claim finding that she failed to establish a compensable employment factor. It determined that she had not submitted sufficient supporting evidence to establish her claims that management committed error or abuse with respect to administrative matters or that supervisors or coworkers subjected her to harassment or discrimination. OWCP discussed most of the alleged claimed employment factors commencing in November 2013, which appellant detailed in her 28-page statement, but did not discuss those alleged to have occurred between March 2009 and October 2013.

On April 19, 2016 appellant requested reconsideration of the March 22, 2016 decision. In support thereof, she submitted a 25-page document in which she further discussed the various incidents and conditions at work which she believed caused the claimed stress-related conditions. In an April 29, 2016 statement, a coworker discussed appellant’s interactions with supervisors. Appellant also submitted additional medical evidence.

By decision dated July 18, 2016, OWCP denied appellant’s request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated September 7, 2017,⁴ it set aside OWCP’s March 22, 2016 decision. The Board found that OWCP failed to adequately address a substantial portion of appellant’s claimed employment factors, *i.e.*, the numerous factors alleged between March 2009 and October 2013, and to make adequate findings of fact regarding those allegations. The Board remanded the case to OWCP for further development of the evidence regarding appellant’s stress-related occupational disease claim.

On remand OWCP further evaluated the factual aspect of appellant’s occupational disease claim in its totality. In February 2018 it solicited and received additional comments and documentation from the employing establishment regarding appellant’s claimed employment factors.

By decision dated March 21, 2018, OWCP again denied appellant’s claim, finding that she had not established a compensable employment factor.

On April 25, 2018 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review. She subsequently submitted additional evidence in support of her claim, including witness statements of current and former coworkers/supervisors, and copies of performance appraisals. In a June 17, 2016 report, Carol A. Sterling, a licensed clinical professional counselor, indicated that appellant reported that she experienced a highly toxic workplace environment during the prior five years, including being subjected to multiple

⁴ *Id.*

criticisms for mistakes, receiving inadequate training and support, and being reprimanded for asking for help. Appellant further reported that this situation resulted in her developing depression, anxiety, and multiple physical symptoms.

By decision dated October 3, 2018, OWCP's hearing representative denied modification of the March 21, 2018 decision.

On September 19, 2019 appellant requested reconsideration of her claim. In an accompanying statement, she asserted that management intended to strip her of her self-worth and to degrade her by subjecting her to personal attacks.

In support thereof, appellant submitted a January 30, 2019 report from Dr. Salma Mannan-Hilaly, Board-certified in family medicine, who noted that, since 2009 though the date of her report, appellant had been diagnosed with major depression, generalized anxiety disorder, propriospinal myoclonus disorder, acid reflux, esophageal reflux, gastrointestinal bleeding, post-traumatic stress disorder, spastic ataxia, small bowel ulcers, nausea, panic disorder, fatigue, somatization disorder, and cervical myelopathy. Dr. Mannan-Hilaly opined that these conditions had been "caused from emotional distress and harassment, due to [appellant's] work environment" from 2009 through 2015 and that her supervisor was the major cause for "her physical and mental health concerns." In a September 6, 2019 report, she advised that appellant was diagnosed with anxiety disorder in 2006 and 2007 and was placed on medication due to distress. Dr. Mannan-Hilaly indicated that appellant was gradually taken off medication during 2008 as she did not need it at that time. She noted that, from 2009 through 2015, appellant was again placed on medication for anxiety disorder and major depression due to her supervisor who "caused her sickness and depression due to the hostile work environment." Dr. Mannan-Hilaly indicated that appellant started to show major symptoms of severe distress at that time.

In a June 20, 2019 letter, Dr. Scott Norris, a Board-certified neurologist, noted that he first treated appellant on May 18, 2016 for atypical myoclonus, abnormal movements, and atypical gait pattern, and that he last saw her on June 5, 2019. He diagnosed functional myoclonus, tremor, and gait (greatly exacerbated by stress), and noted she also had cervical myelopathy secondary to cervical stenosis. Dr. Norris advised that appellant had asked him to write a letter "in consideration that a self-related history of verbal abuse in the work setting (she specifically indicated that a former supervisor bullied and belittled her) greatly exacerbated her atypical movement disorder." He reported that it was generally true that psychological stressors exacerbated symptoms of functional movement disorder and that appellant reported improved functional movement in connection with stress reduction since stopping work.

In a March 1, 2019 report, Ms. Sterling indicated that she had ruled out previous diagnoses of anxiety disorder and acute distress disorder, and noted that she concurred with an attending physician's diagnosis of post-traumatic stress disorder. She advised that, while the traumatic workplace events did not involve a physical threat of death, appellant experienced a "highly charged psychological attack" which felt emotionally abusive to her. Ms. Sterling noted that appellant reported experiencing systemic exclusion and hostile communications from her supervisor, resulting in repeated exposure to demeaning interactions. She opined that the "psychological atmosphere in the workplace had a profoundly negative effect on appellant's psychic safety and personal worth."

Appellant also submitted a copy of the October 3, 2018 OWCP hearing representative's decision.

By decision dated November 7, 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 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.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

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

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁰ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

⁵ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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 M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁸ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ 20 C.F.R. § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹¹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

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).

On September 17, 2019 appellant filed a timely request for reconsideration of an October 3, 2018 decision,¹² but she did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. She argued that she established compensable employment factors because management intended to strip her of her self-worth and to degrade her by subjecting her to personal attacks. However, OWCP had previously considered and rejected these same arguments when it denied appellant's stress-related occupational disease claim. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant submitted additional medical evidence, including January 30 and September 6, 2019 reports from Dr. Mannan-Hilaly, and a June 20, 2019 letter from Dr. Norris. While this medical evidence is new, it is not relevant because it does not directly address the underlying issue of the present case which is factual in nature, *i.e.*, whether appellant submitted sufficient factual evidence, with adequate supporting documentation, to establish a compensable employment factor. The submission of this medical evidence does not warrant a review of appellant's claim on the merits because the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

Appellant submitted a March 1, 2019 report from Ms. Sterling, a licensed clinical professional counselor, who advised that appellant reported experiencing systemic exclusion and hostile communications from her supervisor. This nonmedical document is not relevant to above-noted underlying issue of the present case because it only contains a second-hand description of appellant's unsupported allegations regarding work conditions. Therefore, the submission of this document would not require reopening of appellant's case for review on the merits.¹⁴ Moreover, its content is similar to that of previously submitted documents which have already been considered by OWCP, including a June 17, 2016 report from Ms. Sterling. Appellant also submitted a copy of the October 3, 2018 decision of OWCP's hearing representative, but this document was already of record and would not require reopening of the claim for merit review. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁵ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

¹² See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

¹³ See *supra* note 11.

¹⁴ *Id.*

¹⁵ See *supra* note 10.

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).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2020
Washington, DC

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

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

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