

FACTUAL HISTORY

On September 9, 2019 appellant, then a 39-year-old vocational rehabilitation specialist, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety and stress causally related to factors of her federal employment. She noted that she first became aware of her condition on March 1, 2019 and realized its relation to her federal employment on August 9, 2019. Appellant explained that when she arrived at work on an unspecified date she stopped at a building to talk with her supervisor where she had an altercation with another employee when she requested approval to access the building. She indicated that she was irritated at the “lengthy wait time” for admittance and became frustrated with the ensuing conversation in the office. Appellant also lost her car keys.

In a development letter dated September 16, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate letter of even date, OWCP requested that the employing establishment obtain comments from a knowledgeable supervisor regarding the accuracy of appellant’s statements. It afforded both parties 30 days to respond.

In a September 16, 2019 statement, the employing establishment responded and challenged the claim as appellant had not submitted any supporting factual evidence. No additional evidence was received.

By decision dated January 6, 2020, OWCP denied appellant’s emotional condition claim. It found that she had not factually established the occurrence of the claimed work factors.

On September 9, 2020 appellant requested reconsideration.

Thereafter, OWCP received a July 17, 2019 emergency department report indicating that appellant had received treatment on that date due to the employing establishment’s concern about her “bizarre and erratic behavior,” including “barging into other employees’ offices....”

In a partially-redacted incident report dated August 29, 2019, the employing establishment police advised that they had escorted appellant to a building to retrieve her keys, but once in the building, she began using a computer and refused to leave. Appellant was cited for disorderly conduct for interrupting her supervisor’s meeting and for trespassing.

A Notification of Personnel Action (Form SF-50) indicates that appellant resigned from the employing establishment due to health challenges effective November 13, 2019.

On August 14, 2020 the employing establishment police brought appellant to the emergency department after an altercation. Dr. Samir M. Haq, a Board-certified internist, found no mental health condition.

By decision dated December 8, 2020, OWCP modified its January 6, 2020 decision to find that appellant had not established the factual component of her claim as she had failed to provide a statement describing in detail the factors of employment to which she attributed her stress-related condition. It noted that it was unclear whether she was claiming a traumatic injury or an occupational disease. OWCP sent the decision to appellant’s last known address of record.

On June 22, 2021 appellant requested reconsideration. In support thereof, she submitted a July 23, 2019 work status note from Dr. Jennifer M. Garrison, an osteopath. Dr. Garrison provided work restrictions, including limitations on lifting, stooping, walking, standing, pushing, and pulling, until September 13, 2019.

In a report dated June 14, 2021, Dr. Michael D. Hold, Board-certified in obstetrics and gynecology, advised that appellant had undergone a hysterectomy on June 25, 2019 and indicated that she had work restrictions subsequent to surgery.

By decision dated July 8, 2021, OWCP denied appellant's request for reconsideration 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 own motion or on application.²

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.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ 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.⁶

² 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).

³ 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).

⁴ *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 2020). 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.

⁵ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

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).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she 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).⁷

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. On reconsideration, appellant submitted medical reports dated July 23, 2019 and June 14, 2021. However, the underlying issue in this case was whether the evidence of record was sufficient to establish that the claimed work events factually occurred as alleged. The medical evidence is thus not relevant to the underlying factual issue.⁸ The Board has held the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Appellant has not provided relevant and pertinent new evidence, and thus is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁰

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.¹¹

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).

⁷ *C.B.*, Docket No. 18-1108 (issued January 22, 2019); *F.B.*, Docket No. 18-1039 (issued December 6, 2018).

⁸ *See K.B.*, Docket No. 18-1392 (issued January 15, 2019).

⁹ *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁰ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹¹ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board