

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

_____)	
T.H., Appellant)	
)	
and)	Docket No. 21-0664
)	Issued: September 1, 2022
U.S. POSTAL SERVICE, ROCKY MOUNT)	
CARRIER ANNEX, Rocky Mount, NC,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 5, 2021¹ appellant filed a timely appeal from a July 13, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated July 19, 2019 to the filing of this appeal, pursuant to the Federal

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from July 13, 2020, the date of OWCP's last decision, was January 9, 2021. Because this fell on a Saturday, appellant had until the close of business on Monday, January 11, 2021, to file the appeal. Since using March 15, 2021, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. See 20 C.F.R. § 501.3(f)(1). As appellant's appeal request was postmarked January 5, 2021, the appeal is, therefore, timely.

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.³

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 May 31, 2019 appellant, then a 54-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2019 she sustained post-traumatic stress disorder (PTSD), anxiety, major depressive disorder, and migraine headaches when a coworker hit her with a parcel while in the performance of duty. She added that she believed that this constituted physical assault, harassment, bullying, intimidation, and provocation. On the reverse side of the claim form, E.W., an employing establishment supervisor, indicated that appellant was injured in the performance of duty, but that her knowledge of the facts about the injury did not agree with statements of the employee and/or witnesses. Appellant stopped work on May 30, 2019 and returned to work on May 31, 2019.

In a statement dated May 30, 2019, appellant indicated that D.K., her coworker, hit her left foot and looked at her in a condescending, demeaning, harassing, and provoking manner. She noted that she and D.K. had a history of prior incidents. Appellant related that the May 28, 2019 incident caused an immediate flare up of her preexisting PTSD.

In a development letter dated June 14, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a second statement from appellant dated May 30, 2019 indicating that on May 28, 2019 D.K. walked into her case with a parcel and bent down and hit her left foot with the parcel. Appellant further related that D.K. then stood up and looked at her angrily, turned, and walked out of her case. She indicated that this caused her PTSD, anxiety and depression to flare up, which impacted her concentration and productivity.

In an employee health and safety application dated June 3, 2019, appellant reiterated the details of the claimed May 28, 2019 incident, and stated that D.K. gave her a menacing look and did not apologize, which caused her to feel that D.K. invaded her space and assaulted her.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 13, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In a third statement dated June 5, 2019, appellant indicated that she reported the incident on June 3, 2019 and that she requested that management conduct an investigation.

In a narrative report dated June 11, 2019, Dr. Celeste Good, a psychiatrist, indicated that appellant had been under her care previously for recurrent depression and chronic PTSD. She opined that, because of appellant's PTSD, appellant was not able to tolerate stressful events, loud noises, or conflict. Dr. Good indicated that when she saw appellant on May 30, 2019 appellant related a history of D.K. hitting her foot with a parcel and then grimacing at her and walking away, which triggered a panic attack. She diagnosed an exacerbation of PTSD and opined that, as a result of the incident, appellant's depression and anxiety worsened.

In a letter dated June 12, 2019, Dr. Good requested that appellant be excused from work on various days and partial days in June 2019 and indicated that appellant could return to work with restrictions as of June 13, 2019. In a duty status report (Form CA-17) of even date, she diagnosed major depressive disorder and chronic PTSD.

By letter dated June 17, 2019, the employing establishment controverted the claim based upon its investigation. It noted that appellant had a history of filing claims for stress/anxiety/PTSD when she had any interaction with coworkers and/or management that she found unsuitable. The employing establishment further argued that her mere perceptions or feelings did not constitute a compensable factor of employment.

In a witness statement dated June 26, 2019, M.D., appellant's coworker, indicated that appellant and D.K. do not communicate with each other.

In a separate witness statement of even date, V.H., appellant's coworker, indicated that it was widely known throughout the employing establishment that D.K. has a "disdain" for appellant, that they do not speak to one another, and that this had been an ongoing issue since 2014.

By decision dated July 19, 2019, OWCP found that appellant did not sustain an emotional condition in the performance of duty as she had not established that it "arose during the course of employment and within the scope of compensable work factors as defined by FECA."

On April 17, 2020 appellant requested reconsideration of OWCP's July 19, 2019 decision. In support of her request, she argued that the evidence of record established that a medical condition arose during the course of her employment and within the scope of compensable work factors. Appellant also submitted July 31 and November 20, 2019 reports of Dr. Good, who indicated that appellant could return to work, but should avoid contact with two supervisors, M.G. and C.I., and that she required various other restrictions to reduce stress and noise.

By decision dated July 13, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

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.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.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).

Appellant has not demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Rather, appellant argued that she was in the performance of duty at the time of the May 28, 2019 incident because she was performing her official duties. The Board finds, however, that this argument is not relevant to the underlying factual issue of the present case, *i.e.*, whether she

⁴ 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁶ *Id.* at § 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 (September 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.

⁷ *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Robert F. Stone*, 57 ECAB 292 (2005).

⁹ 20 C.F.R. § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

established an emotional condition causally related to a compensable employment factor.¹⁰ Consequently, appellant is 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).

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. In support of her request for reconsideration, appellant submitted additional reports from Dr. Good dated July 31 and November 20, 2019. While these reports were not previously considered, they are substantially similar to her June 11 and 18, 2019 reports that were previously of record and considered by OWCP. Providing additional evidence that duplicates or is substantially similar to evidence already of record does not constitute a basis for reopening a case.¹¹ As appellant has not provided relevant and pertinent new evidence, she was also not entitled to a merit review based on the third requirement under section 10.606(b)(3).¹²

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.¹³

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).

¹⁰ *T.C.*, Docket No. 20-1536 (issued April 23, 2021).

¹¹ *M.L.*, Docket No. 22-0120 (issued May 12, 2022); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *see G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

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

¹³ *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 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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