

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

_____)
D.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Kewaskum, WI, Employer)
_____)

Docket No. 21-0678
Issued: January 10, 2023

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 29, 2021 appellant filed a timely appeal from a November 24, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 3, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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 June 12, 2019 appellant, then a 56-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal

¹ 5 U.S.C. § 8101 *et seq.*

employment, including harassment and retaliation by managers and coworkers. She related that following an incident where she was physically assaulted by her coworker on April 29, 2019 she began having episodes of extreme anxiety, panic attacks, fatigue, and insomnia, among other issues, until she was completely incapacitated on May 1, 2019. Appellant asserted that she was subsequently harassed by S.R., her postmaster, who had not responded to her pleas for help and retaliated against her after she reported the April 29, 2019 incident to the police and the Office of the Inspector General (OIG). She noted that she first became aware of her condition and realized its relation to her federal employment on February 25, 2019. Appellant stopped work on February 25, 2019 and returned to work on March 1, 2019.

In a development letter dated June 24, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence.

Appellant subsequently submitted narrative statements further detailing the allegations made with regard to her emotional condition claim. She also submitted additional evidence including, police reports, United States Postal Inspection Service investigation reports, medical reports, grievance forms, and witness statements.

OWCP also received a July 1, 2019 letter from the employing establishment controverting appellant's claim.

By decision dated October 3, 2019, OWCP denied appellant's emotional condition claim, finding that she had not established any compensable employment factors.

Appellant subsequently submitted an October 3, 2019 report in which Dr. Jim Giese, a Board-certified psychologist, diagnosed a generalized anxiety disorder, major depressive disorder and post-traumatic stress disorder. Dr. Giese opined that the April 2019 employment incident and her management's failure to quickly address the situation aggravated her condition and ultimately led to the development of her diagnosed conditions.

On September 25, 2020 appellant requested reconsideration of OWCP's October 3, 2019 decision.

In an August 12, 2020 medical note, Dr. Manila Sodhi, Board-certified in internal medicine, indicated that she had been treating appellant for her worsening depression and anxiety.

By decision dated November 24, 2020, 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 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

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 did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. 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).⁷

On reconsideration, appellant submitted additional medical evidence, including an October 3, 2019 report from Dr. Giese and an August 12, 2020 note from Dr. Sodhi. While this medical evidence is new, it is not relevant because it does not directly address the underlying issue

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 the merit 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 M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Supra* note 3.

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.⁸ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

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 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁸ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).