

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

C.Y., Appellant)	
)	
and)	Docket No. 22-0699
)	Issued: June 2, 2023
SOCIAL SECURITY ADMINISTRATION,)	
ATLANTA REGION, Atlanta, GA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 5, 2022 appellant filed a timely appeal from a November 9, 2021 merit decision and a March 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 28, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged; and (2) 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 June 27, 2018 appellant, then a 40-year-old lead contact representative, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety attacks due to factors of her federal employment. She asserted that her job required her to service the public by performing a high volume of work at the front window, answering a steady stream of incoming telephone calls, processing mail/work listings, and implementing multiple employing establishment programs, policies, and procedures. Appellant maintained that, after the management in her local office changed at the end of 2016, the new management subjected her to harassment, discrimination, and retaliation, and her stress level increased drastically. She noted, "I went from an average manageable work environment to a hostile work environment in 2017." Appellant noted that she first became aware of her claimed condition on March 8, 2017 and first realized its relation to her federal employment on August 17, 2017. She did not stop work.

In a July 9, 2018 statement, appellant alleged that, after her local office management team changed in approximately November 2016, her work environment changed from being normal to being "completely hostile and intolerable." She asserted that she contacted employing establishment officials about the problem, but it remained unresolved. Appellant indicated that she had been promoted to lead customer service representative in October 2016 and had been able to "manage the daily stresses" of performing her job duties. She claimed that the new management team embarrassed her in front of coworkers and the public, gave her duplicate work assignments, and wrongly denied her career advancement opportunities. Appellant recounted that, in approximately August 2017, she realized that management did not appreciate her hard work and that, in approximately October 2017, D.M., her immediate supervisor since late-2016, retaliated against her for filing an Equal Employment Opportunity Commission (EEOC) claim by "manipulating" her performance review.

Appellant submitted medical reports, dated March 9, 2017 through July 6, 2018, in which Dr. Kimberly Kaye, a Board-certified internist, excused her from work for a series of periods. In her July 6, 2018 report, Dr. Kaye noted that appellant, who had been diagnosed with anxiety, reported working in a hostile and discriminatory environment.

In a July 24, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary and attached a questionnaire for her completion. By separate development letter of even date, OWCP requested that the employing

³ Docket No. 21-0179 (issued September 30, 2021).

establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

On August 6, 2018 OWCP received a document in which appellant asserted that D.M. unfairly criticized her in December 2016 when she submitted a form to gain authorization to operate a private transportation business and that she used a "rude, harsh, and abrupt tone" to wrongly accuse her of misplacing a form that a claimant had filed to appeal an agency decision. Appellant alleged that, on approximately January 20, 2017, D.M. told appellant in a harsh tone that appellant could promote whomever she wished regardless of work ethic and job performance as the lead customer service representative. D.M. also spoke to appellant in a harsh manner regarding appellant's responsibility for all training and development in her work unit. Appellant claimed that, in March 2017, D.M. and another supervisor isolated her from the rest of her work unit by first announcing an upcoming meeting to other service representatives and that D.M. showed no remorse for her actions. She alleged that, on approximately April 10, 2017, D.M. spoke loudly in a harsh tone in the middle of the office and questioned her as to whether she was going to work on her private business while she was at home on sick leave.

Appellant asserted that, in April 2017, she expressed her concerns regarding the work environment to D.M. and another supervisor, but they did not address her concerns. She believed that D.M. had punitive intent when she indicated that she would determine her days off work. Appellant claimed that, when she received a performance evaluation in April 2017, D.M. told her in a condescending tone that she needed to show more initiative. She maintained that, in early-May 2017, D.M. unnecessarily embarrassed her in front of coworkers about a minor error, and also rudely banged on her computer and told her to "check her mail" for no apparent reason. Appellant claimed that, on May 5, 2017, D.M. improperly directed her to redo a work assignment and that, in July 2017, she unreasonably scrutinized how long she took for her lunch break and wrongly criticized her for several emails she sent regarding her mentoring of a trainee. She alleged that, between August and December 2017, D.M. improperly instructed her to use personal leave to address an EEOC matter, which she believed to be work related.

In an August 6, 2018 statement, appellant described her work schedule and noted that she had been able to manage the stresses of her job as a customer service representative prior to the November 2016 change in the management team of her local office. She again asserted that she did not develop an emotional condition until 2017 when the new management team subjected her to discrimination and mistreatment. Appellant later submitted additional medical evidence and several administrative documents, including forms relating to her request for approval of activity outside the workplace and an August 27, 2018 EEOC decision finding that the employing establishment had not subjected her to harassment or discrimination.

In an August 23, 2018 statement, D.M. expressed her belief that appellant's anxiety was related to her multiple family-related matters and "unrealistic expectations set by herself." She asserted that appellant overextended herself by working in two businesses outside the employing establishment and providing support to aging parents and a young child. D.M. noted that appellant alleged her workload was extremely backlogged, but indicated that workload listings did not support this allegation. She indicated that, during appellant's many absences, coworkers processed her work. D.M. advised that appellant primarily met her deadlines and targets and that, "on the rare occasion when a case slipped through," she did not face any adverse action. She noted that a

member of appellant's unit was out of work for three weeks, but indicated that, in such cases, employees would be reassigned from other units as backup without any major disruption.

In an August 23, 2018 statement, K.M., a management support specialist, asserted that appellant underwent training in late November 2016 to assist her in prioritizing and monitoring her workload. She discussed appellant's work outside the employing establishment and her care for ailing relatives. K.M. claimed that several employees reported to her that appellant had acted towards them in a contentious manner.

By decision dated November 19, 2018, OWCP denied appellant's emotional condition claim because she failed to establish a compensable employment factor. In the factual portion of the decision, it detailed the statements contained in appellant's June 27, 2018 Form CA-2. In the analysis section of the decision, OWCP generally described her allegations.

On December 26, 2018 appellant requested reconsideration of the November 19, 2018 decision. She submitted another document in which she provided further details regarding her claimed employment factors. Appellant submitted additional medical evidence and administrative documents and emails regarding such matters as leave usage, reasonable accommodation for medical conditions, and performance ratings.

By decision dated March 26, 2019, OWCP denied modification of its November 19, 2018 decision.

On November 19, 2019 appellant requested reconsideration of the March 26, 2019 decision. In an October 23, 2019 statement, she asserted that D.M. presented false information that led to appellant's claim being denied. Appellant submitted additional medical evidence.

By decision dated February 24, 2020, OWCP denied modification of its March 26, 2019 decision.

On June 24, 2020 appellant requested reconsideration of the February 24, 2020 decision. She submitted statements from three employing establishment employees who described their own alleged problems with D.M. Appellant submitted numerous documents from an EEOC complaint and a lawsuit she filed in U.S. District Court in 2019.

By decision dated September 25, 2020, OWCP denied modification of its February 24, 2020 decision.

Appellant appealed to the Board and, by decision dated September 30, 2021,⁴ the Board set aside the September 25, 2020 decision and remanded the case to OWCP. The Board found that OWCP failed to provide adequate facts and findings in support of its denial of her emotional condition claim. The Board directed OWCP to evaluate appellant's emotional condition claim and issue a decision, which contained adequate facts and findings.

⁴ Docket No. 21-0179 (issued September 30, 2021).

On remand, OWCP further evaluated appellant's emotional condition claim and by decision dated November 9, 2021, it denied the claim because she did not establish a compensable employment factor. It provided a more detailed discussion of her claimed employment factors.

On December 28, 2021 appellant requested reconsideration of the November 9, 2021 decision. In an accompanying statement, she further discussed her job duties, including her need to address customer service and public relations issues. Appellant indicated that many customers requiring service lined up in the lobby of her workspace and that she dealt with a high volume of incoming telephone calls and inquiries by mail. She also argued that she established employment factors with respect to harassment/discrimination by supervisors, and wrongdoing by management regarding administrative matters.

Appellant submitted a November 21, 2021 statement from a coworker who asserted that she had worked with appellant since 2008. The coworker indicated that appellant worked hard to help both coworkers and customers. She noted that she had been informed by an unspecified person that work-related stress was the cause of appellant having taken extended leave. The coworker noted, "[t]he work at the [employing establishment] field offices is extremely stressful." Appellant also submitted an April 23, 2019 letter in which a licensed social worker from a private company discussed past counseling sessions that appellant had with the company's providers regarding "job-related concerns."

Appellant submitted documents previously of record, including performance evaluation ratings, positions descriptions, documents relating to EEOC matters, documents from a lawsuit she filed in U.S. District Court in 2019, and numerous emails regarding such matters as leave usage, training/mentoring, reasonable accommodation for medical conditions, and performance evaluation ratings.

By decision dated March 28, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

⁵ See *supra* note 1.

⁶ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); see *T.O.*, Docket No. 18-1012 (issued October 29, 2018); see *Michael E. Smith*, 50 ECAB 313 (1999).

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁰

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹¹ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.¹⁴

⁸ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹¹ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹² *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹³ See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁴ *Id.*

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty, as alleged.

Appellant has alleged that she sustained an emotional condition as a result of a number of incidents regarding her supervisor and conditions at her workplace. OWCP denied her emotional condition claim finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents and conditions are compensable employment factors under the terms of FECA.¹⁵

The Board notes that some of appellant's claims potentially implicate her regular or specially assigned duties under *Lillian Cutler*.¹⁶ Appellant asserted that she sustained an emotional condition because her job required her to service the public by performing a high volume of work at the front window, answering a steady stream of incoming telephone calls and written correspondence, processing mail/work listings, and implementing multiple employing establishment programs, policies, and procedures. However, the Board finds that she has not established an employment factor in this regard in that she only provided vague and general statements regarding her work duties, particularly with regard to the extent she performed each duty over time.¹⁷ In addition, the Board notes that appellant's immediate supervisor, D.M., indicated that, although appellant alleged her workload was extremely backlogged, workload listings did not support this allegation. D.M. maintained that, during appellant's many absences, coworkers processed her work. She further advised that appellant primarily met her deadlines and targets and that, on a rare occasion where a "case slipped through," appellant did not face any adverse action.

Appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters, and that management subjected her to harassment and discrimination.

Appellant alleged that D.M. mishandled matters related to promotions, training, leave usage, management of work assignments, and criticism of work performance. She asserted that D.M. unfairly criticized her in December 2016 when she submitted a form to gain authorization to operate a private transportation business and that D.M. wrongly accused her of misplacing a form that a claimant had filed to appeal an agency decision. Appellant claimed that, in March 2017, D.M. and another supervisor isolated appellant from the rest of her work unit by first announcing an upcoming meeting to other service representatives. She asserted that, in April 2017, she expressed her concerns regarding the work environment to D.M. and another supervisor, but they did not address her concerns. Appellant claimed that, when she received a performance evaluation in April 2017, D.M. improperly told her that she needed to show more initiative. She asserted that,

¹⁵ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁶ See *Lillian Cutler*, *supra* note 10.

¹⁷ See *Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (the Board noted that a claimant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her and caused her stress).

on May 5, 2017, D.M. wrongly directed her to redo a work assignment and that, in July 2017, appellant unreasonably scrutinized how long she took for her lunch break and improperly criticized her for several emails she sent regarding her mentoring of a trainee. Appellant alleged that, between August and December 2017, D.M. wrongly instructed appellant to use personal leave to address an EEOC matter which she believed to be employment related.

The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁸ However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.²⁰

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant submitted emails and memoranda which concerned some of these administrative/personnel matters, but the communications did not show that the employing establishment committed error or abuse with respect to the m. There is no indication in the case record that she obtained a final determination from an administrative body showing that the employing establishment committed the alleged error or abuse.²¹ Although appellant expressed dissatisfaction with the actions of several superiors, particularly with respect to D.M., the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²² She submitted statements from three employing establishment employees who described their own alleged problems with D.M., but these statements would not establish an employment factor as they describe alleged actions or comments by D.M., which did not occur in appellant's presence and were not directed towards her.²³ Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by coworkers and supervisors. She claimed that, after her local office management team changed in approximately November 2016, her work environment changed from being normal to being "completely hostile and intolerable." Appellant asserted that the new management team embarrassed her in front of coworkers. She alleged that, in approximately October 2017, D.M. retaliated against her for filing an EEOC claim

¹⁸ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁹ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

²⁰ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

²¹ *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²² *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²³ *See C.L.*, Docket No. 14-0983 (issued January 23, 2015).

by “manipulating” her performance review. Appellant asserted that D.M. also spoke to appellant in a harsh manner regarding appellant’s responsibility for all training and development in her work unit. She alleged that, on approximately April 10, 2017, D.M. spoke loudly in a harsh tone in the middle of the office and questioned her as to whether she was going to work on her private business while she was at home on sick leave. Appellant further believed that D.M. had punitive intent when she indicated that she would determine her days off work. She maintained that, in early-May 2017, D.M. unnecessarily embarrassed appellant in front of coworkers about a minor error, and also rudely banged on her computer and told her to “check her mail” for no apparent reason.

To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee’s performance of his or her regular duties, these could constitute employment factors.²⁴ The Board has held that unfounded perceptions of harassment do not constitute an employment factor.²⁵ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²⁶

Appellant did not submit corroborative evidence in support of her allegations regarding the claimed instances of harassment and discrimination. She did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²⁷ Appellant failed to submit the findings of any complaint or grievance, which demonstrates that management committed harassment and discrimination. In fact, the case record contains an August 27, 2018 EEOC decision finding that the employing establishment had not subjected her to harassment or discrimination. With respect to appellant’s claims that D.M. and other officials made harassing and discriminatory comments, appellant failed to submit probative evidence supporting these claims.²⁸ Appellant submitted emails and memoranda which concerned some of the claimed actions which she believed constituted harassment and discrimination, but the communications did not show any evidence that the employing establishment committed such actions. Therefore, she has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁹

²⁴ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²⁵ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁶ *See id.*

²⁷ *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²⁸ *See generally L.C.*, Docket No. 20-0461 (issued June 2, 2021).

²⁹ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.³⁰

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.³¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³² If it chooses to grant reconsideration, it reopens and reviews the case on its merits.³³ 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.³⁴

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the caserecord³⁵ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.³⁶

ANALYSIS -- ISSUE 2

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).

³⁰ 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).

³¹ 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).

³² *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.

³³ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

³⁴ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³⁵ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

³⁶ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224-25 (1979).

On November 28, 2021 appellant filed a timely request for reconsideration of a November 9, 2021 decision.³⁷ The Board finds, however, that she did not establish that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. Appellant argued that she established employment factors with respect to harassment/discrimination by supervisors, wrongdoing by management in administrative matters, and stressful work duties. However, the submission of this argument does not warrant a review of appellant's claim on the merits because OWCP had previously considered and rejected this argument when it denied her claim. 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.³⁸ Appellant, therefore, is not entitled to a review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The underlying issue is whether appellant has established an employment factor. She submitted a November 21, 2021 statement from a coworker who noted that she had been informed by an unspecified person that work-related stress was the cause of appellant having taken extended leave. The coworker noted, "[t]he work at the [employing establishment] filed offices is extremely stressful." Although the coworker mentioned appellant's work stress, the statement would not be relevant to the underlying basis of the denial of appellant's claim, *i.e.*, appellant's failure to establish an employment factor, because the comments regarding work stress made by the coworker are vague and general in nature. The submission of this statement 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.³⁹ Appellant also submitted an April 23, 2019 letter in which a licensed social worker from a private company discussed past counseling sessions that appellant had with the company's providers regarding "job-related concerns." However, the submission of this document also would not constitute a basis for reopening appellant's case because it does not provide support for her specific claimed employment factors and thus is not relevant to the underlying issue of the case.

Appellant submitted documents that had previously been submitted to OWCP, including performance evaluation ratings, positions descriptions, documents from a lawsuit she filed in U.S. District Court in 2019, and numerous emails regarding such matters as leave usage, training/mentoring, reasonable accommodation for medical conditions, and performance evaluation ratings. However, her resubmission of these already considered documents would not require OWCP to conduct a merit review because, as noted above, 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.⁴⁰ As appellant has not provided relevant

³⁷ See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

³⁸ See *supra* note 37.

³⁹ See *supra* note 38.

⁴⁰ See *supra* note 37.

and pertinent new evidence, she is not entitled to a merit review based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty, as alleged. The Board finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2022 and November 9, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 2, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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