

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

C.M., Appellant)

and)

INDEPENDENT AGENCIES, U.S. EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION, Washington, DC, Employer)

**Docket No. 23-0289
Issued: June 22, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 24, 2022 appellant filed a timely appeal from a July 12, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days has elapsed from OWCP's last merit decision, dated May 11, 2021 to the filing of this appeal, pursuant to the Federal 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.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies the request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, oral argument is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

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 order are incorporated herein by reference. The relevant facts are as follows.

On November 27, 2012 appellant, then a 63-year-old general attorney, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic stress disorder, anxiety/depression, back spasms, and chronic high blood pressure because the employing establishment improperly linked its role as her employer and as an adjudicator of claims she had previously filed against the Office of Personnel Management (OPM) with the employing establishment. She noted that she first became aware of her conditions and their relationship to her federal employment on January 1, 2002. Appellant stopped work on September 18, 2012.

OWCP, by decision dated March 10, 2014, denied appellant's emotional condition claim, finding that she failed to establish a compensable factor of employment.

On April 6, 2014 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional evidence. In a June 4, 2014 letter, she requested that OWCP issue subpoenas for two witnesses.

By decision dated July 9, 2014, an OWCP hearing representative denied appellant's request for the issuance of subpoenas. In a March 11, 2015 decision, an OWCP hearing representative affirmed the March 10, 2014 decision, finding that the evidence of record was insufficient to establish a compensable work factor.

On March 10, 2016 appellant requested reconsideration of the March 11, 2015 decision denying her emotional condition claim.

OWCP, by decision dated March 17, 2016, denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On August 8, 2016 appellant appealed OWCP's March 17, 2016 decision to the Board. By order dated July 14, 2017,⁴ the Board set aside the March 17, 2016 nonmerit decision. The Board found that appellant's March 10, 2016 request for reconsideration was in fact timely as it

³ Docket No. 16-1616 (issued July 14, 2017).

⁴ *Id.*

was filed within one year of OWCP's March 11, 2015 merit decision. The Board remanded the case for OWCP to apply the legal standard of review reserved for timely requests for reconsideration.

OWCP, by decision dated September 20, 2017, denied modification of the March 11, 2015 decision, again finding that the evidence submitted failed to establish a compensable employment factor.

Appellant requested reconsideration of her claim on September 12, 2018, December 10, 2019, and March 8, 2021, contending that her diagnosed emotional conditions were caused by her senior legal advisor duties from 2002 to 2012. She contended that she engaged in intense interactions with employing establishment officials who were involved in the adjudication of her appeals regarding her 1994 complaint against OPM alleging discrimination against African American applicants in the administrative law judge (ALJ) examination process. Appellant also contended that she was subsequently demoted to the position of attorney advisor. She noted that in June 2001 the employing establishment ordered OPM to take corrective action in response to her EEOC complaint. Appellant asserted, however, that OPM along with assistance from high-level employing establishment officials, executed a plan to circumvent the 2001 EEOC order and altered the terms and conditions of her employment. She further asserted that since 2002 the employing establishment, in concert with OPM, retaliated against her for criticizing the employing establishment's disregard of OPM's discrimination against African American ALJ applicants. Appellant asserted additional allegations pertaining to her work status, the denial of her requests for reasonable accommodation, being subjected to an investigation by the Federal Bureau of Investigations, and her leave requests being ignored by her supervisor. Additionally, she asserted that OWCP failed to consider all the relevant evidence she submitted and disregarded its required procedures for adjudicating her emotional condition claim. Appellant submitted evidence in support of her requests for reconsideration.

By decisions dated December 11, 2018, March 9, 2020, and May 11, 2021, OWCP denied modification of its denial of appellant's emotional condition claim. It continued to find that she failed to establish a compensable employment factor of employment.

On May 10, 2022 appellant requested reconsideration. She reiterated her prior contention that OWCP failed to consider all the relevant evidence she submitted and disregarded its required procedures for adjudicating her emotional condition claim. Appellant continued to allege that her claimed emotional conditions were caused by her stressful work environment, which included interacting with employing establishment officials who unethically compromised the adjudication of her EEOC claims filed against OPM and changed the status of her position and work duties.

OWCP, by decision dated July 12, 2022, denied appellant's request for reconsideration of the merits of her claim under 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.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 record and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

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).

⁵ *Supra* note 2 at § 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).

⁶ 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).

⁷ *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 (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.

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

⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *W.C.*, Docket No. 22-0938 (issued December 19, 2022); *G.T.*, Docket No. 21-1276 (issued September 8, 2022); *I.M.*, Docket No. 19-1189 (issued November 16, 2020); *G.H.*, Docket No. 22-1306 (issued January 11, 2023); *B.T.*, Docket No. 22-0006 (issued December 28, 2022); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Appellant's timely May 10, 2022 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that she did not advance a relevant legal argument not previously considered by OWCP. In her reconsideration request, appellant contended that OWCP failed to consider all the relevant evidence she submitted and disregarded its procedures for adjudicating her emotional condition claim. She further alleged that her claimed emotional conditions were caused by her stressful work environment. Specifically, appellant contended that employing establishment officials unethically compromised the adjudication of her EEOC complaints filed against OPM and changed her position status and work duties. However, the Board notes that OWCP previously considered and rejected these same arguments when it denied her emotional condition claim. 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.¹¹ Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹²

Further, the Board finds that appellant has not submitted pertinent new and relevant evidence to establish a compensable employment factor. In support of her request, appellant resubmitted the August 9, 2016 e-mail to the Board. However, as noted above, 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.¹³ Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).¹⁴

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.¹⁵

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).

¹¹ See *G.T., id.*; *I.M., id.*

¹² *Id.*

¹³ *W.C., supra* note 10; *G.H., supra* note 10; *B.T., supra* note 10.

¹⁴ *Id.*

¹⁵ See *W.C., supra* note 10; *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 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