

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

On November 12, 2021 appellant, then a 58-year-old sales, services, and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed emotional conditions including anxiety, panic attacks, and major depressive disorder due to factors of her federal employment. She asserted that an employing establishment supervisor, R.F., falsely accused her of telling construction workers to stop working on November 2, 2021 and that she was verbally attacked by safety manager S.L. and others, which created a hostile work environment. On the reverse side of the claim form, R.F. controverted the claim, noting that appellant displayed an emotional reaction that was self-generated. Appellant indicated that she first became aware of her conditions and realized their relation to her federal employment on November 4, 2021. She stopped work on November 4, 2021 and returned on November 8, 2021.

In support of her claim, appellant submitted an undated statement noting that, on November 4, 2021, at 10:52 a.m., she observed a construction worker removing flooring and creating dust without using a curtain, despite instructions to do so. She related that, when she asked a contractor whether a curtain would be used, he advised that he did not know. Appellant indicated that a supervisor, R.F., subsequently called her into his office and accused her of asking a contractor to stop working, which she denied doing, and that he asked her to write a statement admitting that she told contractors to stop. She considered this incident to be retaliation by R.F. for reporting health and safety issues at the employing establishment, and noted that he was aware of her post-traumatic stress disorder (PTSD) condition, and attempted to trigger her anxiety and disrupt her work duties. In a November 4, 2021 incident report, the acting postmaster, R.F., pursuant to his investigation, recounted appellant's interactions with the contractors and other witnesses on November 2, 2021.

In a November 4, 2021 note, Dr. Chin-Po Paul Yang, a Board-certified psychiatrist, indicated that appellant experienced worsening PTSD symptoms at the employing establishment on that date when she was subjected to alleged intense bullying and harassment by supervisors. He related that she experienced heightened anxiety with panic symptoms including shakiness, shortness of breath, heart palpitations, uncontrollable crying, headache, and diminished cognitive functioning. Dr. Yang held appellant off work until November 8, 2021.

In a November 30, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim, and provided a factual questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to submit the requested evidence.

Thereafter, OWCP received response from R.F. reiterating that appellant was asked if she ever spoke to the construction crew and told them to stop working. When appellant related that she had not done so, she was asked to write a statement of her interaction with the crew foreman

and identify who she interacted with, but she was unsure and left to identify the person. R.F. explained that he never asked her to write a statement admitting that she instructed the crew to stop working, and he only asked her to document her interaction with them. He asserted that safety is a priority, and that appellant's allegation that she was being retaliated against for exercising her right to make a report of hazard was meritless and unfounded.

In a November 2, 2021 statement, appellant again related her interaction with the contractors. In a November 4, 2021 progress note, Dr. Yang noted that she sought urgent treatment for worsening of anxiety, panic attack, and PTSD symptoms after she had an emotional meltdown at work due to a traumatic encounter with her supervisor that day. He related that appellant reported that employees were in the office to enforce environmental codes, including a safety officer who instructed that construction work be completed behind a curtain to contain dust. Dr. Yang indicated that she reported that she "gently" questioned the contractors as to why there was no curtain, and her supervisor subsequently accused her of instructing workers to stop working, which she attempted to explain that she had not done. However, appellant's supervisor would not listen and ordered appellant to write a report, triggering her PTSD and causing her to lose emotional control and cry. Appellant further related that her supervisor humiliated her in front of the contractors and blamed her for disturbing the peace, and that she cried incessantly, could not work, and had to go home early. Dr. Yang noted that she reported shaking while driving home, heart palpitations, shortness of breath, sweating, headache, numbness, rumination over traumatic memories, lack of concentration, and insomnia. He diagnosed major depressive disorder and PTSD.

By decision dated February 2, 2022, OWCP denied appellant's occupational disease claim, finding that she had not submitted sufficient evidence to establish the implicated factors of her federal employment. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On February 2, 2023 appellant, through her representative, requested reconsideration of the February 2, 2022 decision and submitted additional evidence, including a duplicate copy of R.F.'s November 4, 2021 incident report. Appellant also submitted a January 31, 2023 statement in which she noted that R.F. was the author of the November 4, 2021 incident statement and was a witness to the events on that date, and that she wished to use R.F.'s November 4, 2021 incident statement as evidence to support her claim.

In a February 1, 2023 note, Dr. Yang referenced his November 4, 2021 progress note, and reiterated that the events that occurred on that date triggered and superimposed appellant's existing PTSD condition, and that there was no evidence to suggest otherwise.

By decision dated March 22, 2023, 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 does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain

³ *Id.* at § 8128(a).

limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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 show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, she was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her reconsideration request, appellant submitted a duplicate copy of R.F.'s November 4, 2021 incident report and a February 1, 2023 note from Dr. Yang reiterating his findings and observations from his November 4, 2021 progress note. The Board has held that evidence which merely duplicates or is substantially similar to evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.⁸ In its February 2, 2022 merit decision, OWCP noted that it had received a November 4, 2021 incident report by R.F. Thus, the November 4, 2021 incident report does not constitute relevant and pertinent new evidence not previously considered by OWCP. Additionally, as the issue in the case was factual and not medical in nature, Dr. Yang's February 1, 2023 note is not relevant to the issue for which OWCP denied appellant's claim.⁹ The Board has held that the submission of evidence which does not address

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* § 10.607(a). 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.

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* § 10.608(a), (b).

⁸ *M.F.*, Docket No. 21-1221 (issued March 28, 2022); *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *See F.B.*, Docket No. 18-1039 (issued December 6, 2018); *M.M.*, Docket No. 15-1622 (issued September 27, 2016); *T.E.*, Docket No. 14-1047 (issued October 9, 2014); *Bonnie A. Contreras*, 57 ECAB 364 (2006) (where a claimant did not establish an employment incident alleged to have caused an injury, it was not necessary to consider any medical evidence); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

the particular issue involved does not constitute a basis for reopening a case.¹⁰ Appellant, therefore, was not entitled to a review of the merits of her claim based on the third above-noted requirements 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.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).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2023
Washington, DC

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

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

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

¹⁰ *Id.*; *D.P.*, Docket No. 13-1849 (issued December 19, 2013).

¹¹ *See 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).