

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

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N.D., Appellant )

and )

U.S. POSTAL SERVICE, LOS ANGELES )  
PROCESSING & DISTRIBUTION CENTER, )  
Los Angeles, CA, Employer )  
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**Docket No. 24-0021  
Issued: April 12, 2024**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 10, 2023 appellant filed a timely appeal from an August 2, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated April 4, 2023, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 31, 2022 appellant, then a 33-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed emotional/stress-related conditions due to factors of her federal employment, when her manager exposed himself to her while at work. She noted that she first became aware of her conditions and realized their relation to factors of her federal employment on May 4, 2022. Appellant stopped work on May 4, 2022.

In an accompanying statement, appellant indicated that on April 2, 2022 she was sexually harassed at work by manager, R.W. She noted that at approximately 8:00 p.m. she was walking with two co-workers when R.W. asked her to step into the junior manager of distribution operations (MDO) office. Appellant indicated that they were casually talking when R.W. exposed himself. She reported being very shocked and yelled, “Are you serious?” and “Have u been drinking?” Appellant noted that R.W. was silently laughing. She indicated that another supervisor was on the other side of the cubicle. Appellant reported walking out of the office. She did not see R.W. again until April 13, 2022, when he attempted to speak to her, and she walked past him. She indicated that the incident caused her to be depressed and anxious, and she did not want to return to work.

In an after-visit summary dated May 4, 2022, Dr. Christina Kim, a Board-certified internist, noted that appellant reported being sexually harassed by her manager at work in April 2022. She noted that her manager had been “flirty” with her in the past and in April 2022, he called her into his office and exposed himself. Dr. Kim indicated that appellant had not returned to work due to anxiety and fear of being in the presence of her harasser. She diagnosed acute stress disorder and anxiety.

In a development letter dated November 3, 2022, 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 development letter of the same date, OWCP requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding appellant’s claim. It provided both parties 30 days to respond.

OWCP received additional evidence. A police department investigative report dated April 23, 2022 noted that on April 2, 2022 appellant alleged that her manager exposed himself to her at work.

Appellant submitted a standard grievance form dated April 30, 2022 alleging that on April 2, 2022 she was sexually harassed by manager, R.W. She reported that R.W. asked her to step into the junior MDO office and while casually talking he exposed himself. Appellant responded by stating “Are You Serious?” “and “Have u been drinking?” She noted that R.W. silently laughed, and she walked out of the office. Appellant reported that another supervisor was on the other side of the cubicle when the alleged incident occurred. She related that she saw R.W. on April 13, 2022, he attempted to speak to her, and she walked away. Appellant indicated that R.W. proceeded to follow her trying to force her to speak to him.

In a step two grievance appeal dated July 18, 2022, appellant alleged that management failed to provide a safe work environment as she was sexually harassed by manager R.W. on April 2, 2022. On August 19, 2022 the grievance was settled and management was instructed to complete the initial management inquiry process (IMIP) investigation regarding the work incident.

In a September 1, 2022 Equal Employment Opportunity (EEO) Complaint, appellant alleged that she was subjected to a hostile work environment. She alleged that on April 2, 2022 she was sexually harassed by her supervisor when he exposed himself to her, and on April 13, 2022 he followed her and attempted to force her to speak to him.

In a letter dated November 9, 2022, the employing establishment responded to OWCP's development letter noting that they did not concur with appellant's allegations.

In a November 22, 2022 response to OWCP's development letter, appellant related that on April 2, 2022 her manager exposed his private area to her in the junior MDO office and she became very uncomfortable, fearful, and anxious. She advised that she never returned to the employing establishment after the incident. Appellant indicated that on April 14, 2022 he initiated further contact with her and she became angry and upset. She noted that she did not have stress outside of work and her hobbies included reading, praying, and working out. Appellant reported that in May 2022 she became depressed, anxious, and could not sleep. She denied experiencing any symptoms prior to the incident with R.W.

In a November 29, 2022 note, Dr. Jesus Cespedes, a Board-certified psychiatrist, diagnosed anxiety disorder and recommended outpatient psychotherapy.

In a letter dated February 6, 2023, OWCP requested that the employing establishment submit the IMIP investigation report regarding the employment incident on April 2, 2022.

OWCP received additional evidence. On July 21, 2022 an interview was conducted with R.W. who denied appellant's allegations against him. On April 2, 2022 R.W. reported entering the junior manager's office with appellant and they spoke about the passing of his aunt and about a truck that he was considering purchasing. He indicated that the conversation lasted 5 to 10 minutes. R.W. indicated that another manager J.M. was in the office when he entered with appellant. In a handwritten statement, he indicated that on April 2, 2022 appellant approached him with a question about her clock rings. R.W. noted that they walked into the junior MDO office, and he asked another manager, J.M., to check on appellant's inquiry. He reported vaguely remembering the brief conversation with appellant.

The IMIP investigation report dated October 11, 2022 concluded that although there was no direct evidence provided that the April 2, 2022 incident occurred as alleged, it more likely than not that R.W. acted as alleged. The decision was based on appellant's statements to several people within a short period of time after the incident occurred and R.W.'s statement that he attempted to speak to appellant about a week later and she ignored him, which was consistent with an employee who was uncomfortable with someone. Several witness statements were included in the report.

On February 8, 2023 Dr. Melvin Sigman, a Board-certified psychiatrist, diagnosed major depressive disorder and post-traumatic stress disorder. He opined that the incident involving

appellant's manager exposing his private part to her was the cause of her post-traumatic stress disorder and depression.

OWCP received a leave year 2022 absence analysis.

By decision dated April 4, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It explained that there was no evidence to corroborate the specific employment incidents that appellant claimed caused or contributed to her alleged emotional/stress-related conditions. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On May 5, 2023 appellant requested reconsideration.

In an undated statement, appellant referenced a message allegedly sent to her social media account from R.W. prior to the April 2, 2022 incident. She related that R.W. had been saying inappropriate things to her and the employing establishment was aware of the message. Appellant reported that R.W.'s social media account was deactivated after the employing establishment learned of the Instagram message. She noted that manager, J.M., did not witness the incident because he was in another cubicle. Appellant advised that she never experienced anxiety or depression until this incident. She further stated that the agency failed her as an employee by denying her transfer on May 2, 2023.

OWCP received a photocopy of a social media post from a person who appellant alleged was R.W.

By decision dated August 2, 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 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.<sup>2</sup>

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.<sup>3</sup>

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<sup>2</sup> 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).

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</sup> 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.<sup>6</sup>

### 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).

With her request for reconsideration, appellant provided a statement and referenced a social media message allegedly sent from R.W., prior to the April 2, 2022 incident. She asserted that R.W. had been saying inappropriate things to her and his social media account was deactivated after the employing establishment learned of the message. Appellant noted that she never experienced anxiety or depression until this incident. However, her reconsideration request does not advance a new legal argument not previously considered, nor show that OWCP erroneously applied or interpreted a specific point of law. The Board finds that the argument submitted by appellant on reconsideration was cumulative, duplicative, or repetitive in nature and was insufficient to warrant reopening the claim for merit review.<sup>7</sup> Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>8</sup>

On reconsideration, appellant submitted a photocopy of a social media post allegedly from R.W. While this evidence is new, it is not relevant because it does not directly address the underlying issue 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. Additionally, it is unclear who authored the post. The Board has held that the submission of evidence, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> Therefore, the above evidence does not constitute relevant and pertinent new evidence not previously considered by OWCP and appellant was not entitled to a

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<sup>4</sup> *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.

<sup>5</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>7</sup> *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>8</sup> *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>9</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

merit review of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

The Board, accordingly, finds that appellant has not met any of the requirements under 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 August 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2024  
Washington, DC

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

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

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

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<sup>10</sup> *Id.*