

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

K.R., Appellant))
))
and)	Docket No. 23-1067))
)	Issued: February 14, 2024)
DEPARTMENT OF THE TREASURY,))
INTERNAL REVENUE SERVICE,))
Binghamton, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2023 appellant filed a timely appeal from July 10, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated July 11, 2022 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 12, 2021 appellant, then a 60-year-old management and program clerk assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2021 her body shut down and she experienced transient global amnesia while in the performance of duty. She alleged that S.F., an employing establishment inventory controller, bullied her and was emotionally and verbally abusive toward her during a telephone call regarding a missing case. Appellant listed D.V., an employing establishment team lead, as a witness to the incident. On the reverse side of the claim form, B.N., an employing establishment department manager, acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 6, 2021 and returned to full-duty work on February 22, 2021.

In a development letter dated January 21, 2021, OWCP advised appellant of the deficiencies in her claim. It informed her that additional factual and medical evidence was necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a January 6, 2021 emergency department summary by Dr. Asher Baer, a Board-certified emergency medicine specialist, who diagnosed transient global amnesia and recommended blood pressure management and a neurology referral.

A January 6, 2021 report of magnetic resonance arteriogram of the head was negative for occlusive disease, aneurysm, or arteriovenous malformation.

In a January 9, 2021 after-visit summary, Dr. William Kornrich, a Board-certified internist, diagnosed transient global amnesia and palpitations. He referred appellant to a cardiologist. In a separate letter of even date, Dr. Kornrich recommended that she remain out of work until January 25, 2021.

In a January 15, 2021 statement, appellant indicated that on January 6, 2021 she was on a call with S.F., who asked her to locate a case file. She advised S.F. that they could not locate the case and asked for further instructions. S.F. then began to bully her and verbally and emotionally abuse her to the point that her body and brain shut down.

In notes dated January 22, 2021, Dr. Kornrich diagnosed transient global amnesia and recommended appellant remain out of work pending a cardiology evaluation.

In an attending physician's report (Form CA-20) dated January 27, 2021, Dr. Kornrich noted a history that appellant was verbally abused by a supervisor over the telephone on January 6, 2021. He diagnosed transient global amnesia and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity.

In a medical note dated January 27, 2021, Dr. John P. Reilly, a Board-certified cardiologist, diagnosed an elevated blood-pressure reading without diagnosis of hypertension. He ordered laboratory work. In a Form CA-20 of even date, Dr. Reilly noted a history of an episode of transient global amnesia and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity, which he described as "verbal argument induced stress."

In a separate duty status report (Form CA-17) of even date, he released appellant to return to full-duty work, effective January 27, 2021.

In a February 4, 2021 Form CA-20, Dr. Lauren DeNiro, a Board-certified neurologist, diagnosed transient global amnesia and checked a box marked “Yes” to indicate that the condition was caused or aggravated by an employment activity, which she described as “triggered by a stressful encounter.” In a Form CA-17 of even date, she released appellant to return to full-duty work.

In a letter dated February 20, 2021, Dr. Kornrich noted that appellant had a history of transient global amnesia but was asymptomatic at present. He released her to return to full-duty work, effective February 20, 2021.

By decision dated March 1, 2021, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted January 6, 2021 employment incident.

OWCP subsequently received a February 19, 2021 medical report by Dr. Kornrich, who documented physical examination findings and diagnosed transient global amnesia. Dr. Kornrich released appellant to return to work, effective February 20, 2021.

In a March 9, 2021 narrative report, Dr. Kornrich noted that on January 6, 2021 appellant was seen at the emergency department for confusion and was diagnosed with transient global amnesia. He outlined his treatment and indicated that he released her to return to work.

In a letter dated March 19, 2021, Dr. DeNiro noted that she had followed appellant since her emergency room visit on January 6, 2021. She diagnosed “transient global amnesia triggered by a stressful event at work.” Dr. DeNiro explained that “stress had been well described to be a triggering event for this condition.”

On March 31, 2021 appellant requested reconsideration of the March 1, 2021 decision.

By decision dated June 19, 2021, OWCP modified its March 1, 2021 decision, noting that it had erred in denying her claim based upon causal relationship. It rather found that the evidence of record was insufficient to establish that the January 6, 2021 employment incident occurred, as alleged.

On July 29, 2021 appellant requested reconsideration of the June 19, 2021 decision. In support of her request, she submitted a July 24, 2021 statement, wherein she again described the January 6, 2021 telephone call with S.F. and her subsequent symptoms and treatment. Appellant noted that she had previously fallen down the stairs and hit her head 35 years ago.

In further support of her request, appellant submitted a January 6, 2021 form report and discharge sheet by Karen LaChiana, an employing establishment occupational health nurse, who noted that appellant was accompanied by a co-worker to employee health and had no memory of past events that day. Emergency Medical Services (EMS) were initiated. Ms. LaChiana indicated that appellant had a history of an amnesia episode 10 years prior and was unable to sign the discharge sheet due to being disoriented.

An e-mail summary of a message conversation between appellant and S.F. on January 6, 2021 indicated that S.F. requested a file and appellant attempted to look for it with the assistance of two employees but was unable to locate it. S.F. replied, “I will not except [sic] that this work was [sic] input by someone in clerical, please call me[today].” Appellant responded that “the case was never worked. We researched on AMS. Nothing found.”

In a witness statement dated July 29, 2021, M.E. noted that appellant was his supervisor and had witnessed her speaking with J.F. on January 6, 2021. He indicated that he heard her say “stop yelling and cursing at me” and then she began to cry. M.E. noted that D.V. then told appellant to hang up the telephone, and appellant appeared light-headed and disoriented. D.V. escorted her to the nurse’s office, and EMS took her to the hospital. M.E. indicated that he was aware of incidents of S.F. arguing with other employees.

By decision dated October 22, 2021, OWCP continued to deny the claim, finding that the evidence of record was insufficient to establish an emotional or stress-related condition in the performance of duty as alleged.

On April 19, 2022 appellant requested reconsideration of the October 22, 2021 decision.

By decision dated July 11, 2022, OWCP denied modification.

On September 7, 2022 appellant requested reconsideration of the July 11, 2022 decision. In support of her request, she submitted additional witness statements.

In a January 6, 2021 e-mail, D.M., an co-worker, wrote to appellant “It’s the same no matter where u [sic] go, you are the BEST!!!” (Emphasis in original). In an accompanying undated statement, D.M. explained that the reason she sent the e-mail on January 6, 2021 was that she heard appellant hysterically crying after walking out of the ladies’ room. She noted that she observed her telling B.N. “what S.F. just put you through.” D.M. indicated that S.F. previously screamed and cursed at another employee, R.F., but that incident was never “dealt with.”

In a July 22, 2021 statement, R.R., an employing establishment collections representative, indicated that he received a telephone call on January 6, 2021 that appellant was disoriented to time and place. He traveled to the worksite and observed her being taken from the building by EMS. R.R. followed the ambulance to the emergency room and noted that when appellant was taken from the ambulance, she did not recognize him, despite having worked together for many years. He related that she was not able to recall the events leading up to and following her visit to the emergency room.

In a statement dated August 26, 2022, D.V. indicated that she wished to clarify a prior July 20, 2021 statement regarding the claimed January 6, 2021 employment incident between appellant and S.F. She noted that she clearly heard S.F. on the call yelling, being disrespectful, and bullying appellant. D.V. indicated that she heard S.F. yell that she did not “know her job” and that she was going to report her to K.E., an employing establishment program manager, and B.N. She related that S.F.’s yelling was disturbing, so she went in and out of appellant’s office.

In a September 1, 2022 addendum to his prior statement, M.E. indicated that when he heard appellant say, “stop yelling and cursing at me,” he went into her office and clearly heard S.F. on the telephone “yelling at her and saying some inappropriate things.”

By decision dated July 10, 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 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 improperly denied appellant’s request for reconsideration of the merits of her claim.

The underlying issue on reconsideration is whether appellant had met her burden of proof to establish an emotional or stress-related condition in the performance of duty as alleged.

² 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).

³ 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D., id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

⁴ *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.

⁵ *Id.* at § 10.608(a); *see also D.B.*, Docket No. 22-0518 (issued November 28, 2022); *Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

In support of her September 7, 2022 reconsideration request, appellant submitted additional witness statements, including an August 26, 2022 statement by D.V. and a September 1, 2022 statement by M.E., who both indicated they personally heard S.F. yelling, being disrespectful, threatening, bullying, and saying inappropriate things to appellant during the call on January 6, 2021. The Board finds this evidence specifically addresses the underlying issue of whether appellant has established an emotional or stress-related condition in the performance of duty as alleged. As such, these statements constitute relevant and pertinent new evidence not previously of record. Therefore, the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b).⁷

Consequently, the Board will reverse OWCP's July 10, 2023 decision and remand the case for an appropriate merit decision regarding appellant's traumatic injury claim.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

⁷ See *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 14, 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