

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

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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 16-0496</b>
	)	<b>Issued: April 15, 2016</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Gaithersburg, MD, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 29, 2015 appellant filed a timely appeal of a July 15, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed since the last OWCP merit decision on August 20, 2009 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 determined that appellant's requests for reconsideration were insufficient to warrant merit review of the 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**

This case was before the Board on a prior appeal with respect to a traumatic injury claim for an emotional condition causally related to a November 17, 2007 employment incident.<sup>2</sup> Appellant, a 56-year-old mail processor, had filed a Form CA-1 claim alleging that on November 17, 2007 she had suffered anxiety attacks after an incident with her supervisor regarding leave slips. She indicated in a statement received by OWCP on March 24, 2008 that her supervisor wanted her to sign leave slips designating her as absent without leave (AWOL) for certain dates. By decision dated April 9, 2008, OWCP denied the claim, finding no compensable work factors and thus appellant's claimed emotional condition was not sustained in the performance of duty. Appellant requested reconsideration, and by decision dated November 6, 2008, OWCP denied modification. The record indicates she again requested reconsideration, and by decision dated June 25, 2009, OWCP reviewed the merits of the claim and denied modification.

Appellant requested reconsideration on July 17, 2009, alleging that her supervisor was loud and abusive on November 17, 2007. OWCP reviewed the merits of the claim and denied modification by decision dated August 20, 2009.

On October 26, 2009 appellant requested reconsideration. By decision dated November 16, 2009, OWCP found the request was insufficient to warrant a merit review of the claim. Appellant filed an appeal with the Board, and by decision dated October 18, 2010, the Board affirmed the August 20, 2009 OWCP decision.<sup>3</sup> The Board found that appellant had spoken to a union representative about "court leave" but was told the requested leave could not be approved as it was not for employing establishment business or for jury duty. Appellant was advised to request annual leave. As to a compensable work factor, the Board found there was no evidence of error or abuse with respect to the administrative matter involving appellant's leave. The Board also affirmed the November 16, 2009 nonmerit decision, finding that appellant's reconsideration request had merely reiterated her allegation that her supervisor was loud and abusive.

On December 10, 2010 OWCP received a November 9, 2010 letter from appellant requesting reconsideration of the October 18, 2010 Board decision. The letter was entitled "petition for reconsideration" and contained the address of the Clerk of the Board. There is no indication that the letter was sent to the Board. Appellant argued that it was harassment for the supervisor to have her sign as AWOL for requested dates, and that "court leave" was not limited to employer's business or jury duty. She argued that she was in the performance of duty and the employing establishment erred with respect to an administrative matter.

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<sup>2</sup> Appellant has other claims for injury, including an occupational disease or illness (Form CA-2) claim filed on October 21, 2012 for an emotional condition. Pursuant to that claim, OWCP accepted as compensable a September 29, 2012 employment incident involving verbal abuse and accepted the claim for one episode of panic attack.

<sup>3</sup> Docket No. 10-0772 (issued October 18, 2010).

Appellant submitted a December 4, 2013 letter, received by OWCP on December 9, 2013, reiterating her request for reconsideration. She noted that she had an accepted claim based on verbal abuse. With respect to evidence, appellant submitted medical reports dated January 30 and June 28, 2013 from Dr. Michael Horan, a Board-certified psychiatrist. In the January 30, 2013 report, Dr. Horan indicated that appellant had been under his treatment since January 2007 for panic disorder and dysthymia. On May 18, 2015 appellant submitted a May 5, 2015 letter again indicating that she had previously requested reconsideration and that she had submitted supporting medical evidence.

By decision dated July 15, 2015, OWCP found that appellant had timely filed a reconsideration request. It also found that she had requested reconsideration on December 10, 2010, December 9, 2013, and May 18, 2015. However, OWCP found that appellant had not met the requirements for a merit review of her claim.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> OWCP's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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."<sup>5</sup> 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>6</sup>

### **ANALYSIS**

In the present case, appellant had alleged that she sustained an emotional condition as a result of a November 17, 2007 incident with her supervisor regarding leave. The last OWCP decision on the merits of the claim was dated August 20, 2009, and the Board reviewed the merits of the claim by decision dated October 18, 2010. Appellant had one year from the October 18, 2010 decision to request reconsideration.<sup>7</sup>

The record reveals that by letter dated November 9, 2010, received on December 10, 2010, appellant requested reconsideration. Although the letter referred to a "petition for reconsideration" and contained the Board's address, there is no indication that it was sent to the

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<sup>4</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

<sup>6</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>7</sup> A right to reconsideration within one year accompanies any subsequent merit decision, including any merit decision by the Board. *See Federal (FECA) Procedure Manual, Part 2 -- Claims, Reconsiderations, Chapter 2.1602.4a* (February 2016); *see also H.T.*, Docket No. 14-964 (issued December 17, 2014).

Board. Instead OWCP treated it as a timely reconsideration request and issued the decision of July 15, 2015.<sup>8</sup>

The issue presented is whether appellant has met any of the requirements of 20 C.F.R. § 10.606(b)(3) to reopen her claim. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. OWCP determined that she had not established a compensable work factor in this case as to the supervisor's actions on November 17, 2007, and the Board affirmed that finding. Appellant made general references to employing establishment premises, right to union representation, and the clear evidence of error standard. She did not cite to a specific point of law and show how OWCP erroneously applied or interpreted the law, nor did she advance a new and relevant legal argument. In the prior appeal the Board found that there was no probative evidence of administrative error in the actions of the supervisor. It is well established that the reopening of a case is not required where the legal contention has no reasonable color of validity.<sup>9</sup>

With respect to evidence submitted, appellant submitted medical evidence from Dr. Horan. The reports are irrelevant to the underlying merit issues presented. Until a compensable work factor is established, the medical evidence is irrelevant since the medical issue is whether a diagnosed condition is causally related to a compensable work factor.<sup>10</sup>

The Board accordingly finds OWCP properly denied the reconsideration requests without merit review. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied merit review.

### **CONCLUSION**

The Board finds OWCP properly determined that appellant's requests for reconsideration were insufficient to warrant merit review of the claim.

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<sup>8</sup> See *J.T.*, Docket No. 07-0737 (issued April 12, 2007) (appellant sent a petition for reconsideration of a Board decision to OWCP and it properly considered it as a request for reconsideration and issued a decision).

<sup>9</sup> *Elaine M. Borghini*, 57 ECAB 549 (2006); *Annette Louis*, 54 ECAB 783 (2003).

<sup>10</sup> See *James W. Scott*, 55 ECAB 606 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 15, 2015 is affirmed.

Issued: April 15, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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