

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

J.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Temple, TX, Employer**

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**Docket No. 16-1914
Issued: March 29, 2017**

Appearances:
Coby Jones, for the appellant¹
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 September 29, 2016 appellant, through her representative, filed a timely appeal from an April 26, 2016 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated April 23, 2015, 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.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ Appellant timely requested an oral argument before the Board. By order dated February 9, 2017, the Board exercised its discretion and denied the request, finding that the issue presented could be addressed based on review of the case record. *Order Denying Oral Argument*, Docket No. 16-1914 (issued February 9, 2017).

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).

On appeal, appellant's representative contends that OWCP did not review the relevant new medical evidence and personal statements submitted in its decision. He also contends that OWCP did not follow its procedures because it did not inform appellant about the strict hierarchal order of the five basic elements necessary to establish her emotional condition claim.

FACTUAL HISTORY

On February 11, 2013 appellant, then a 44-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that on September 20, 2012 she first became aware of stress, an anxiety attack, and an inability to sleep at night. She further alleged that on January 2, 2013 she first realized that her conditions were caused or aggravated by her federal employment. Appellant stopped work on January 8, 2013. The employing establishment controverted the claim.

By letter dated March 27, 2013, OWCP advised appellant of the five basic elements to establish a claim under FECA. It further explained that the evidence of record was insufficient to establish her claim. OWCP provided a questionnaire that appellant was to complete and return. It requested that she describe in detail the employment-related activities she believed contributed to her condition, including information regarding the frequency and duration of various implicated activities. OWCP also requested appellant to provide information regarding all activities outside her federal employment. Additionally, it noted that no medical evidence had been received. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence in support of her claimed injury.

Appellant submitted various statements alleging that she was unduly disciplined, subjected to false allegation and forgery, threatened with removal from her job, incorrectly placed on leave without pay, harassed, discriminated against, and verbally abused by management. She also submitted witness statements regarding the alleged incidents. Appellant provided medical evidence addressing her emotional conditions, causal relationship, and resultant disability.

In an April 23, 2015 decision, OWCP denied appellant's claim as she had failed to establish any compensable factor of employment as a cause of her conditions and thus, fact of injury had not been established. As there were no compensable employment factors established, it did not address the medical evidence.

In a February 1, 2016 medical report, Dr. Michael Thompson, an internist, noted appellant's history of injury as related to him. He reported findings on physical examination and diagnosed a stressful work schedule and acute stress reaction due to her federal employment.

In an appeal request form dated March 22, 2016 and received by OWCP on March 28, 2016, appellant requested reconsideration.

By decision dated April 7, 2016, OWCP denied further merit review of appellant's claim. It found that the evidence submitted in support of her request for reconsideration was irrelevant or immaterial. The decision was reissued with appeal rights to the correct address on April 26, 2016.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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 Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

On March 28, 2016 appellant requested reconsideration of OWCP's April 23, 2015 decision which denied her claim for an emotional condition as it found that she had not established a compensable factor of federal employment. The underlying issue on reconsideration is factual in nature, whether appellant established a compensable employment factor.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered.

The Board further finds that appellant did not submit any relevant or pertinent new evidence not previously considered. Dr. Thompson's February 1, 2016 report noted her history of injury and found that she had a stressful work schedule and an acute stress reaction due to her federal employment. However, the history of injury provided by him is based on appellant's statements rather than any personal knowledge of the events at the employing establishment. The medical evidence is irrelevant as it does not constitute a witness statement or otherwise corroborating evidence establishing that the employment factors as alleged by her occurred.⁸

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *S.B.*, Docket No. 14-0160 (issued June 9, 2014).

Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.⁹ Thus, Dr. Thompson's report is irrelevant to the underlying factual issue of whether appellant has established a compensable factor of employment.¹⁰ Therefore, this report is insufficient to warrant further merit review of the claim.

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.

On appeal, appellant's representative contends that OWCP did not review the relevant new medical evidence and personal statements submitted in its decision. As noted above, however, OWCP discussed Dr. Thompson's report in its April 26, 2016 nonmerit decision and found that it was irrelevant to the issue of whether appellant established a compensable employment factor. Furthermore, no additional personal statements have been submitted since the last merit decision of April 23, 2015. As discussed, Dr. Thompson's report is not relevant to the underlying factual issue in this case.

The representative further contends that OWCP did not follow its procedures because it did not inform appellant about the strict hierarchal order of the five basic elements necessary to establish her emotional condition claim. Contrary to the representative's contention, OWCP, in its March 27, 2013 development letter to appellant, specifically set forth the five basic elements to establish a claim under FECA and afforded appellant 30 days to submit the necessary factual and medical evidence to establish her claim. Furthermore, OWCP's April 23, 2015 decision advised appellant of the basis of the claim denial and provided specific appeal rights if she disagreed with OWCP's decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

⁹ A.K., 58 ECAB 119 (2006).

¹⁰ The Board has held that evidence which does not address the particular issue involved does not constitute a basis for reopening a case. See *J.J.*, Docket No. 16-0555 (issued June 2, 2016); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 29, 2017
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