

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

M.K., Appellant

and

**U.S. POSTAL SERVICE, SAN RAMON POST
OFFICE, San Ramon, CA, Employer**

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**Docket No. 22-1132
Issued: December 20, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 20, 2022 appellant filed a timely appeal from a June 7, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 7, 2021 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).

FACTUAL HISTORY

On August 16, 2021 appellant, then a 36-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2021 she experienced stress and shock while

¹ 5 U.S.C. § 8101 *et seq.*

in the performance of duty when B.H., a shop steward, used profanities in a conference room. She stopped work on August 13, 2021.

In an accompanying statement dated August 12, 2021, appellant related that B.H. pointed his finger and yelled profanities at her in front of her supervisor, S.E., and S.L., a shop steward.

OWCP received a hospital record dated August 13, 2021 which indicated that appellant was verbally abused the prior day by a coworker and presented with symptoms of emotional disturbance. Appellant's diagnoses were listed as acute stress disorder and anxiety disorder. In a work status report dated August 16, 2021, Dr. Swapna Merupula, Board-certified in internal medicine, placed appellant off work from August 13 through 20, 2021.

On September 23, 2021 OWCP referred appellant to Dr. Alberto Gerardo Lopez, a Board-certified psychiatrist, for a second opinion evaluation. Appellant did not attend the evaluation.

By decision dated December 7, 2021, OWCP found that the evidence of record established as a compensable factor of employment that B.H. pointed his finger and yelled profanities at appellant in front of her supervisor and a union representative; however, the claim remained denied as the medical evidence of record was insufficient to establish that her diagnosed acute stress and anxiety disorders were caused or aggravated by the accepted compensable employment factor.

On March 10, 2022 appellant requested reconsideration. No additional evidence was received.

By decision dated June 7, 2022, 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

² *Id.* at § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *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.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 properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has neither shown that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP.⁷ Consequently, she 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).⁸

Moreover, appellant did not submit additional evidence on reconsideration. Because appellant's request for reconsideration did not include relevant and pertinent new evidence not previously considered she is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board accordingly finds that appellant has not met 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.

⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

⁵ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Id.* at § 10.606(b)(3); *see also V.P.*, Docket No. 18-0440 (issued August 24, 2018); *A.F.*, Docket No. 18-0295 (issued July 18, 2018); *T.H.*, Docket Nos. 17-1578 and 17-1651 (issued April 26, 2018); *Deborah G. Nuzzo*, Docket No. 06-521 (issued May 15, 2006).

⁸ *Id.*

⁹ 20 C.F.R. § 10.606(b)(3)(iii); *see M.C.*, Docket No. 18-0841 (issued September 13, 2019); *D.P.*, Docket No. 17-0290 (issued May 14, 2018).

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 June 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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