

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

T.S., Appellant	)	
	)	
and	)	Docket No. 23-0331
	)	Issued: August 2, 2023
DEPARTMENT OF VETERANS AFFAIRS,	)	
ALEXANDRIA VETERANS	)	
ADMINISTRATION HEALTH CARE SYSTEM,	)	
Alexandria, LA, Employer	)	
	)	

*Appearances:*  
Wayne Johnson, Esq., for the appellant<sup>1</sup>  
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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 2, 2023 appellant, through counsel, filed a timely appeal from a July 8, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision dated April 15, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## 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 May 15, 2019 appellant, then a 40-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she developed depression, anxiety, post-traumatic stress disorder (PTSD), severe migraines, gastrointestinal symptoms, urticaria with angioedema, bulging and herniated disc, sciatica, thyroid nodules, and right knee degenerative joint disease with osteoarthritis due to retaliation and harassment by M.S. She noted that she first became aware of her condition on March 20, 2017 and realized that it was caused or aggravated by her federal employment on January 2, 2019.

Pearl R. Nelson, Ph.D., and licensed professional counselor, in an October 23, 2018 counseling report, diagnosed anxiety and major depressive disorder. Appellant described an incident with a patient who threatened her while brandishing a weapon. She stated that she was currently off work because of work-related stress and severe sciatic pain.

In an October 30, 2017 verification of services, Dr. Nelson noted that appellant has been under her care for treatment of depression and anxiety since August 17, 2017. Appellant attributed her condition to a hostile work environment including bullying, isolation, intimidation, exclusion, and sabotage.

Appellant submitted screen shots of texts messages and copies of email messages covering the period January 20, 2017 through January 29, 2019, related to her harassment allegations.

In a development letter dated June 11, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of medical and factual evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted narrative statements further detailing allegations with regard to her emotional condition claim. She also submitted additional evidence including screenshots of text messages, copies of criminal proceedings regarding B.J., leave analysis and timesheets, an absence without leave (AWOL) notification and return to duty letter, a January 12, 2017 II Step Grievance, copies of Merit System Protection Board claims, equal employment opportunity (EEO) investigative responses, photographs, email correspondence, and medical reports.

By decision dated January 10, 2020, OWCP denied appellant's occupational disease claim, finding that she had not established that the alleged incidents did not occur as alleged.

On February 10, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated April 15, 2020, OWCP's hearing representative found that OWCP applied an inappropriate standard in making findings of fact regarding appellant's allegations. The hearing representative set aside the

January 10, 2020 decision and remanded the case to OWCP to provide the employing establishment an opportunity to respond to appellant's allegations.

In a May 28, 2020 letter, the employing establishment advised that it had no knowledge of any workplace harassment, retaliation, or discrimination.

By *de novo* decision dated August 18, 2020, OWCP denied appellant's claim, finding that she failed to establish any compensable factors of employment.

On September 17, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on January 17, 2021.

On January 7, 2021 OWCP received a sworn affidavits from witnesses T.N., V.A., and R.V.; a January 31, 2019 EEO investigative report; emails from J.L. regarding complaints; email correspondence from witnesses V.A., C.W., and R.V.; a December 18, 2012 supervisor fact finding report; and January 30, 2013 fact finding recommendations.

By decision dated April 15, 2021, OWCP's hearing representative affirmed the August 18, 2020 decision.

On April 15, 2022 appellant, through counsel, requested reconsideration, asserting that the evidence established appellant's claim of harassment. In support thereof, counsel submitted a general notice to employees dated July 19, 2021 finding that a violation of the Civil Rights Act had occurred at the employing establishment, and a January 12, 2017 step 2 grievance alleging a hostile work environment.<sup>3</sup>

By decision dated July 8, 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.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a

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<sup>3</sup> Counsel in his reconsideration request noted that the employing establishment had overall been subject to court actions, and after a ruling, entered into a settlement agreement with appellant's union. He acknowledged that appellant's EEO claims were still pending.

<sup>4</sup> 5 U.S.C. § 8128(a); *see G.T.*, Docket No. 21-1276 (issued September 8, 2022); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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>5</sup>

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</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>8</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).

Appellant did not assert that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that she is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).<sup>9</sup>

On reconsideration, OWCP received a copy of a bargaining unit step 2 grievance, and a July 19, 2021 general notice to employees citing an order by the EEOC, which found that a violation of the Civil Rights Act had occurred at the employing establishment. The submitted evidence fails to address the underlying issue of whether appellant established a compensable factor with respect to her allegation of harassment. The step 2 grievance had been previously submitted and reviewed by OWCP. The Board has held that evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>10</sup> While the EEOC notice to employees is new, it is not relevant because it is not specific to appellant's claim, but rather is a general notice to employees. As discussed, the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup> Appellant has not provided relevant and pertinent new evidence and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).<sup>12</sup>

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<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see also G.T., id.; L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(a); *see also G.T., supra* note 4; *M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *G.T., id.; E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *Id.* at § 10.606(b)(3)(i) and (ii); *see also J.D.*, Docket No. 21-1191 (issued July 14, 2022); *B.W.*, Docket No. 21-0709 (issued December 29, 2021); *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>10</sup> *See J.D., id.; T.T.*, Docket No. 19-0559 (issued July 19, 2019); *D.K.*, 59 ECAB 141 (2007).

<sup>11</sup> *Id.*; *see also C.C.*, Docket No. 21-0820 (issued December 22, 2021).

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

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.

**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 July 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board