

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

S.B., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
INDEPENDENCE ANNEX, Charlotte, NC,
Employer

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**Docket No. 24-0703
Issued: December 13, 2024**

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 19, 2024 appellant filed a timely appeal from an April 4, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated November 29, 2023, 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.²

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.*

² The Board notes that following the April 4, 2024 decision, and on appeal, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior orders are incorporated herein by reference. The relevant facts are as follows.

On April 17, 2018, appellant, then a 40-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging an emotional condition causally related to factors of her federal employment. She alleged that her tachycardia and stress were brought on by the fraud and negligence of her supervisors. She noted that she first became aware of her condition on February 8, 2018 and realized its relation to factors of her federal employment on April 9, 2018.⁴

By decision dated September 11, 2019, OWCP denied the claim, finding that appellant had not established a compensable factor of employment.

Appellant appealed to the Board. By order dated December 15, 2020, the Board set aside OWCP's September 11, 2019 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx368, xxxxxx341, xxxxxx435, xxxxxx066, and xxxxxx767 followed by a *de novo* decision.

On remand, OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx341, xxxxxx435, xxxxxx066, xxxxxx767, and xxxxxx368, with the latter serving as the master file.

Appellant subsequently submitted additional argument and evidence.

By *de novo* decision dated January 29, 2021, OWCP summarily denied the present claim without providing new findings.

On February 10, 2021, appellant requested reconsideration and submitted additional evidence.

By decision dated May 10, 2021, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By order dated July 21, 2023, the Board set aside OWCP's January 29 and May 10, 2021 decisions and remanded the case for OWCP to review the evidence in all of appellant's consolidated emotional condition claims and make findings of fact and provide a statement of reasons for its decision, pursuant to the standards set forth in 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After any further development deemed necessary, OWCP was to issue a *de novo* decision.

By *de novo* decision dated October 3, 2023, OWCP denied appellant's emotional condition claim, finding that appellant had not established a compensable factor of employment.

³ *Order Remanding Case*, Docket No. 21-0834 (issued July 21, 2023); *Order Remanding Case*, Docket No. 19-1937 (issued December 15, 2020).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx341. Appellant has other emotional condition claims before OWCP under OWCP File Nos. xxxxxx341, xxxxxx435, xxxxxx066, xxxxxx767, and xxxxxx368.

On October 4, 2023, appellant requested reconsideration and submitted additional evidence.

By decision dated November 29, 2023, OWCP modified the prior decision to reflect that several events were accepted as factually established; however, the claim remained denied as these events involved administrative actions, and appellant had not established that the employing establishment acted in error in these actions. It listed accepted events that were not compensable factors of employment including: appellant's EEO complaints against numerous employing establishment employees alleging retaliation, hostile work environment, and mental disability discrimination; a March 26, 2018 five-day smoke out letter; denial of a reasonable accommodation request; and retaliation by management for filing EEO complaints and impeding appellant's emotional condition claim.

On March 30, 2024, appellant requested reconsideration. She submitted a narrative statement, wherein she reiterated previous contentions and summarized previous evidence to support her emotional condition claim. In support thereof, appellant submitted a "physician's statement," a mental status examination and a clinical assessment by Jonathan Traylor, M.A., a licensed clinical therapist. She also submitted evidence previously of record.

By decision dated April 4, 2024, 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 or her own motion or on application.⁵

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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely, but fails to meet at least one of the

⁵ 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).

⁶ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *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.

⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

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).

With her request for reconsideration, appellant provided a statement wherein she reiterated previous contentions and summarized previous evidence to support her emotional condition claim. Appellant's reconsideration request does not advance a new legal argument not previously considered, nor does it show that OWCP erroneously applied or interpreted a specific point of law. Thus, appellant 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).¹⁰

In support of her request for reconsideration, appellant submitted a "physician's statement," a mental status examination, and a clinical assessment by Jonathan Traylor, M.A., a licensed clinical therapist. While new, this evidence is irrelevant to the underlying issue which is factual in nature.¹¹ Appellant also resubmitted evidence previously of record. As these documents repeat evidence already in the case record, it is cumulative and does not constitute relevant and pertinent new evidence. The Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the record does not constitute a basis for reopening a claim.¹² Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements under 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).

⁹ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

¹¹ *See D.G.*, Docket No. 22-1367 (issued June 28, 2024); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record.

¹² *Supra* note 10; *see also S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2024
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