

ISSUE

The issue is whether OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 27, 2018 appellant, then a 40-year-old lead contact representative, filed an occupational disease claim (Form CA-2) alleging that she experienced an emotional/stress-related condition due to factors of her federal employment. She asserted that her job required her to service the public by performing a high volume of work at the front window, answering a steady stream of incoming telephone calls, processing mail/work listings, and implementing multiple employing establishment programs, policies, and procedures. Appellant maintained that, after the management in her local office changed at the end of 2016, the new management subjected her to harassment, discrimination, and retaliation, and her stress level increased drastically. She noted, "I went from an average manageable work environment to a hostile work environment in 2017." Appellant noted that she first became aware of her claimed condition on March 8, 2017 and realized its relation to her federal employment on August 17, 2017. She did not stop work.

In a July 9, 2018 statement, appellant alleged that, after her local office management team changed in approximately November 2016, her work environment changed from being normal to being "completely hostile and intolerable." She asserted that she contacted employing establishment officials about the problem, but it remained unresolved. Appellant indicated that she had been promoted to lead customer service representative in October 2016 and had been able to "manage the daily stresses" of performing her job duties. She claimed that the new management team embarrassed her in front of coworkers and the public, gave her duplicate work assignments, and wrongly denied her career advancement opportunities. Appellant recounted that, in approximately August 2017, she realized that management did not appreciate her hard work and that, in approximately October 2017, D.M., her immediate supervisor since late-2016, retaliated against her for filing an Equal Employment Opportunity Commission (EEOC) claim by "manipulating" her performance review.

Appellant submitted medical reports, dated March 9, 2017 through July 6, 2018, in which Dr. Kimberly Kaye, a Board-certified internist, excused her from work for a series of periods. In her July 6, 2018 report, Dr. Kaye noted that appellant, who had been diagnosed with anxiety, reported working in a hostile and discriminatory environment.

In response to a July 24, 2018 development letter, on August 6, 2018, OWCP received a document wherein appellant asserted that D.M. unfairly criticized her in December 2016 when she submitted a form to gain authorization to operate a private transportation business and that she used a "rude, harsh, and abrupt tone" to wrongly accuse her of misplacing a form that a claimant had filed to appeal an agency decision. She claimed that, in March 2017, D.M. and

⁴ Docket No. 21-0179 (issued September 30, 2021); Docket No. 22-0699 (issued June 2, 2023).

another supervisor isolated her from the rest of her work unit by first announcing an upcoming meeting to other service representatives. On approximately April 10, 2017 D.M. allegedly spoke loudly in a harsh tone in the middle of the office and questioned appellant as to whether she was going to work on her private business while she was at home on sick leave. Appellant claimed that, when she received a performance evaluation in April 2017, D.M. told her in a condescending tone that she needed to show more initiative. She maintained that, in early May 2017, D.M. unnecessarily embarrassed her in front of coworkers about a minor error, and rudely banged on her computer and told her to “check her mail” for no apparent reason. Appellant claimed that, on May 5, 2017, D.M. improperly directed her to redo a work assignment and that, in July 2017, she unreasonably scrutinized how long she took for her lunch break and wrongly criticized her for several emails she sent regarding her mentoring of a trainee. She alleged that, between August and December 2017, D.M. improperly instructed her to use personal leave to address an EEOC matter, which she believed to be work related. In August 6 and 23, 2018 statements, appellant further detailed her claimed employment factors. She also submitted additional medical evidence and several administrative documents, including an August 27, 2018 EEOC decision finding that the employing establishment had not subjected her to harassment or discrimination.

In an August 23, 2018 statement, K.M., a management support specialist, asserted that appellant underwent training in late November 2016 to assist her in prioritizing and monitoring her workload.

By decision dated November 19, 2018, OWCP denied appellant’s emotional/stress-related condition claim, finding that she had not established a compensable employment factor. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 26, 2018 appellant requested reconsideration and submitted additional evidence. By decision dated March 26, 2019, OWCP denied modification of its November 19, 2018 decision.

On November 19, 2019 appellant requested reconsideration. In an October 23, 2019 statement, she asserted that D.M. presented false information that led to her claim being denied. Appellant submitted additional medical evidence.

By decision dated February 24, 2020, OWCP denied modification of its March 26, 2019 decision.

On June 24, 2020 appellant requested reconsideration and submitted statements from three coworkers who described their own alleged problems with D.M. She submitted numerous documents from an EEOC complaint and a lawsuit she filed in U.S. District Court in 2019.

By decision dated September 25, 2020, OWCP denied modification of its February 24, 2020 decision.

Appellant appealed to the Board. By decision dated September 30, 2021,⁵ the Board set aside the September 25, 2020 decision and remanded the case to OWCP to provide adequate

⁵ Docket No. 21-0179 (issued September 30, 2021).

facts and findings in support of its denial of her emotional condition claim *via a de novo* decision.

By *de novo* decision dated November 9, 2021, OWCP again denied the claim finding that the evidence of record was insufficient to establish a compensable employment factor.

On December 28, 2021 appellant requested reconsideration and submitted an additional statement describing her claimed employment factors. Appellant also submitted a November 21, 2021 statement from a coworker who asserted that she had been informed by an unspecified person that work-related stress was the cause of appellant having taken extended leave. Appellant also submitted an April 23, 2019 letter in which a licensed social worker from a private company discussed past counseling sessions that appellant had with the company's providers regarding "job-related concerns."

By decision dated March 28, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated June 2, 2023,⁶ the Board affirmed OWCP's November 9, 2021 and March 28, 2022 decisions.

On August 7, 2023 appellant requested reconsideration.

Appellant submitted a June 28, 2023 report wherein Dr. Barry Brody, a clinical psychologist and licensed marriage and family therapist, indicated that, between late-2017 and late-2018, appellant presented with a mixture of anxiety and depression. He advised that she attributed these conditions to stress at work.

In a July 26, 2023 report, Dr. Elizabeth J. Buckley, a clinical psychologist, completed a medical questionnaire and diagnosed anxiety with post-traumatic features, moderate in severity.

In a July 28, 2023 report, Dr. Kaye completed a medical questionnaire and noted that appellant had been diagnosed with anxiety disorder, depression, and insomnia due to stress at work. In an August 7, 2023 report, she diagnosed severe anxiety directly related to appellant's work environment.

By decision dated August 21, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On September 5, 2023 appellant requested reconsideration.

Appellant resubmitted the June 28, 2023 report of Dr. Brody, July 26, 2023 report of Dr. Buckley, and July 28 and August 7, 2023 reports of Dr. Kaye previously of record.

By decision dated November 28, 2023, OWCP denied appellant's September 5, 2023 request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

⁶ Docket No. 22-0699 (issued June 2, 2023).

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.⁷

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹² and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

ANALYSIS

The Board finds that OWCP properly denied appellant's requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On August 7, 2023 appellant filed a timely request for reconsideration of OWCP's denial of her emotional/stress-related condition claim. The Board finds, however, that she did not establish 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

⁷ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

⁸ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ 20 C.F.R. § 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.

¹⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹³ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of her August 7, 2023 request for reconsideration, appellant submitted medical evidence, including a June 28, 2023 report of Dr. Brody, July 26, 2023 report of Dr. Buckley, and July 28 and August 7, 2023 reports of Dr. Kaye. However, this medical evidence is not relevant because it does not directly address the underlying issue of the present case, *i.e.*, whether appellant submitted sufficient factual evidence to establish a compensable employment factor in connection with her emotional condition claim. The submission of this medical evidence does not warrant a review of appellant's claim on the merits because the Board has held that the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴ Therefore, appellant also failed to satisfy the third above-noted requirement under 20 C.F.R. § 10.606(b)(3). The Board accordingly finds that appellant's August 7, 2023 request for reconsideration 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 September 5, 2023 appellant again filed a timely request for reconsideration of OWCP's denial of her emotional condition claim. The Board finds, however, that she did not establish 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 appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of appellant's September 5, 2023 request for reconsideration, she resubmitted copies of the same medical evidence she submitted in connection with her August 7, 2023 request for reconsideration, *i.e.*, the June 28, 2023 report of Dr. Brody, July 26, 2023 report of Dr. Buckley, and July 28 and August 7, 2023 reports of Dr. Kaye. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.¹⁵ Therefore, appellant also failed to satisfy the third above-noted requirement under 20 C.F.R. § 10.606(b)(3). Consequently, OWCP properly determined that appellant's September 5, 2023 request for reconsideration did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3).

As appellant has not met any of the regulatory 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 requests for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹⁴ See *id.*; see also *N.D.*, Docket No. 24-0021 (issued April 12, 2024).

¹⁵ See *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 21 and November 28, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2024
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