

FACTUAL HISTORY

On March 1, 2012 appellant, a 44-year-old claims examiner, filed an occupational disease claim alleging that his chronic major depression and generalized anxiety disorder were causally related to his federal employment. “My supervisor placed me on administrative leave and sent OIG to my house to search my house and interview me as she told them I was threatening employees and was a danger to myself. No discipline ever occurred, no warnings and the agents dropped the investigation based on no evidence.”² He indicated that he first became aware of his disease or illness on March 1, 2011 and that he first realized on March 25, 2011 that his disease or illness was caused or aggravated by his employment.

In a supporting narrative, appellant compared his job unfavorably to those he previously held with the National Park Service and U.S. Army Reserve. He wrote that he was not helping people or accomplishing anything. “Everyone hates us” appellant noted. Every telephone call he got was from someone yelling or threatening or crying. Twice appellant had to refer cases to federal agents because of personal threats by claimants against him and his family.³

Appellant began his current job in 1997. He alleged that the caseloads were unmanageable from day one and had grown only larger over time, and with increased expectations. Further, appellant alleges that the claims examiner staff had diminished. He stated that, after the World Trade Center attack, he and his coworkers processed hundreds of claims.⁴ For a time after the attack, appellant’s building housed a prison that was overcrowded with “illegals they deemed dangerous.” He noted New Jersey cement walls, Special Weapons and Tactics (S.W.A.T.) teams with automatic weapons, and several rings of security checks points.⁵ Appellant stated that he and his coworkers used to joke about their building blowing up, but “we weren’t fully joking.” Everyone was scared and confused. No one wanted to sit in an office building after the attack, or worse, being in a federal building housing an immigrant jail. Appellant stated that driving through tunnels was no joyful experience either. He noted the smell of the rubble and bodies trapped below, which burned for a year. Appellant then joked about

² When the Office of the Inspector General (OIG) agents interviewed appellant, he recalled a series of conversations he had, or messages he left, with his supervisors, which he felt generated the OIG’s involvement. Appellant had called his supervisor on the morning of St. Patrick’s Day in 2011 and left a message that his anti-anxiety medication was not working and that he needed to see his physician for a new prescription. He requested sick leave but had none, so he began negotiating to use annual leave instead. This was initially denied, but after consulting his union representative, appellant was eventually allowed to use annual leave. He was placed on administrative leave shortly thereafter and asked not to go into work.

³ Without more specific information like a claim number, the employing establishment was unable to comment any further on this point. It indicated that statements were previously submitted on this point.

⁴ The employing establishment confirmed that many claims were filed as a result of the attack, but without more specific information like claim numbers, it was unable to comment further.

⁵ The employing establishment confirmed that a separate floor of the building served as a holding prison for a period of time, and a security presence was implemented around the perimeter, as it was in other federal buildings in the aftermath.

how filling the new tower with federal, state, and municipal offices would make it a bigger target.⁶

Appellant noted that he was ordered, despite his begging and pleading, to deny the claim of a woman who was having flashbacks of the attack. “I remember her crying on the phone and her supervisor cursing me out as being heartless and cruel human being.” That was the first time he really began to question if he was helping people or just hurting them. Appellant discussed other cases he handled, including the worst case he ever had. “It drained me. I begged my boss to reassign the case but he refused.”⁷

Appellant explained that other people used to answer the telephone, but “now claimants call us directly.” He indicated that a high turnover rate in the office caused major stress.⁸

Appellant alleged that he had very few people to consult on major cases. Expectations increased and demands and workloads were resorted every week due to constant turnover. Appellant indicated that he received passing evaluations until the last three years. He stated that, after a bad divorce, and on the advice of a supervisor, he threw himself into his work by working 52-hour weeks (and commuting 20 hours per week).⁹ The workload increased, and claims never ended. Appellant felt that he was spinning his wheels day in and day out.

Appellant stated that he was placed on two separate personal improvement plans (PIPs) even though he was one of the most senior people in the office and had passing ratings in his first 12 years.¹⁰ He further stated, “I worked as hard as I could but nothing was ever good enough.” Appellant stated that his physician diagnosed high blood pressure, irritable bowel syndrome (IBS), anxiety insomnia and sleep apnea. He became morbidly obese. Appellant noted that his job required him to sit eight and a half hours a day, “and if you got up the boss questioned why.” He stated that he worked through lunch most days. Due to his IBS, appellant was questioned and

⁶ The employing establishment could not comment on rumors about their office being relocated to one of the new building sites.

⁷ Without more specific information like a claim number, the employing establishment was unable to comment. It indicated that statements were previously submitted on this point.

⁸ The employing establishment commented that staff still answer the telephone, but the process was different, and claimants could speak directly with claims examiners if they chose to. It added that the office still had several senior claims examiners with a wealth of experience and knowledge who were available to assist at any time.

⁹ The employing establishment commented that a previous statement was provided on this point and added that appellant, like all employees, had the option of working credit time, but it was not a requirement. Further, appellant’s commute was a choice of residence.

¹⁰ The employing establishment stated that appellant’s supervisor had previously submitted a statement acknowledging the issuance of two PIPs due to poor performance. It noted that appellant demonstrated the ability to meet the requirements of the job.

disciplined about using the bathroom too much. He was so embarrassed, but he had to get a note from his physician explaining he need to use the bathroom during the day.¹¹

Appellant alleged that his blood pressure was great when he was away from work but would spike while working. He stated that his physician attributed his anxiety and high blood pressure to work and recommended a psychologist for stress therapy.

Appellant stated that he was placed under retraining, even though he had worked there for 15 years. "I could not keep up. My concentration was non-existent, I couldn't sleep, and my heart was jumping out of my chest." He stated that he received daily e-mails demanding that he account for every task he did during the day.¹²

By March 2011, appellant was severely depressed and miserable. He called his supervisor to request sick leave. Appellant saw both a psychologist and a psychiatrist. When he called to say he was ready to return to work, the supervisor told him to stay home and that she was worried about him. The supervisor placed appellant on administrative leave so he could recover. The next business day, appellant received a FedEx letter from the supervisor ordering him to stay in his home from 8:30 a.m. to 5:00 p.m., and not to go into any federal buildings, to turn in his ID, and to not talk with any coworkers. Four days later, on March 25, 2011, two armed federal agents from the OIG's division came into his home without a warrant and interrogated him for two hours. It was 7:00 a.m. and appellant could not reach his attorney, union representative or psychologist.

The agents told appellant that his supervisor had reported him as a threat, and that he had scared two employees. They took his ID, wanted to know what weapons he had in the house, and demanded to go into his bedroom and bathroom. "I was being treated like a criminal in my own house." Appellant became embarrassed when a friend, who was staying at the house, heard the ruckus and came down to see what was going on.¹³ "They called my psychologist, doctor, friends and coworkers. I was embarrassed and labeled by my boss as a terrorist."

Appellant indicated that he was instructed to meet his supervisor at 8:00 a.m. When he showed up at 6:30 a.m., as he did for 15 years when he carpoled to work, he was charged with

¹¹ The employing establishment noted that previous statements from supervisors denied any knowledge of appellant's IBS, denied ever disciplining appellant for using the bathroom too much, and denied having received any documentation of his condition.

¹² The employing establishment noted that a previous statement from a supervisor indicated that training was provided at appellant's request.

¹³ The employing establishment stated that the supervisor previously submitted a statement acknowledging that appellant was placed on administrative leave as a result of a credible concern about his state of mind and well-being and whether he may be a danger to others in the workplace. It noted that there were no adjudicatory findings that its actions were in error or abusive.

disobeying orders. “They wanted to walk me through the office like a criminal in a perp walk. Since then I have been harassed and humiliated publicly every day by management.”¹⁴

Despite union grievances and Privacy Act requests, appellant alleged that the department never showed cause for sending armed men to his house to harass him. In fact, the regional director advised that his office had not contacted OIG. “I am now scared to be in my house and scared to go to work. I am not safe anywhere because of my bosses.”

Although he was retrained, appellant could no longer handle the work. He asked to work only on impairment awards, which he felt he could do, but he was ridiculed for not processing them fast enough. Appellant had over 500 claims, many of which were 500 days old, and had to be completed in 30 days. “I began working through lunch and working 12-hour days again.”

Appellant stated that his chair mysteriously broke on December 6, 2011, which hurt his back. “Strangely, a bolt was no longer tightened in my chair.”¹⁵ After this injury, his depression worsened. Appellant waited for another visit from the agents. He imagined vans following him. Appellant did not want to leave the house. Although his orthopedic injury improved, his psychological condition worsened and accelerated. “I cannot go into that building or work claims again. I can’t stand the sound of a phone, hearing claimants cry or be able to work multiple lists and timely.” After 15 years, appellant observed, he was now on the other side. He could not work, and his fate was in another claims examiner’s hands. “This is the last thing I wanted.”

In a decision dated September 14, 2012, OWCP denied appellant’s emotional condition claim. It found that he had failed to establish a compensable factor of employment. An OWCP hearing representative found in a December 12, 2012 decision that further development of the evidence was warranted, as it appeared the employing establishment was commenting on appellant’s statement and referencing other statements and documents that did not appear in the record. The hearing representative observed that appellant had implicated his regular claims examiner duties, which indicated a compensable factor of employment under *Lillian Cutler*, 28 ECAB 125 (1976).

The employing establishment’s workers’ compensation coordinator identified the supervisor as having the person who responded to many of the allegations in appellant’s statement.

One of appellant’s former supervisors and current regional director advised that he had not directly supervised appellant since 2004 and that his only engagement with appellant since that time was the passing of pleasantries in the corridors and aisles of their workplace. He noted that it was the policy of the employing establishment to treat everyone with dignity and respect

¹⁴ The employing establishment stated that the supervisor previously submitted a statement confirming that appellant was instructed to report for duty at a certain time on his first day back from administrative leave, and that he was issued a reprimand for failure to follow a supervisory directive. It noted that disciplinary matters are administrative in nature and not related to assigned work.

¹⁵ The employing establishment stated that appellant’s supervisor previously submitted a statement indicating that no one tampered with his chair and that his statement was without merit.

further stating, “[Appellant’s] feeling toward me and his various suspicions are self-generative and unrelated to actual events.” The supervisor confirmed that appellant’s erratic behavior led to the OIG investigation. “We subsequently placed him on administrative leave until we were comfortable that his presence did not represent a danger to the staff.”

A friend of appellant’s submitted a statement that discussed the difficulties appellant was having in his life. “Traumatic life events,” she called them. Appellant’s friend related how appellant had mentioned that his job environment was stressful. A coworker since 2006 also submitted a statement. She stated that she was a witness to appellant’s behavior and of management’s treatment of him. “[Appellant] and I have been friends and he shared management’s actions against him as they progressed. Obviously, I can only provide my opinion and it is possible there are facts I am missing.”

In a decision dated March 5, 2013, OWCP denied appellant’s emotional condition claim. It found that he failed to establish a compensable factor of employment.

Appellant submitted more information. With respect to receiving threats, he discussed a claimant who had tracked down and threatened the regional director. When the case was assigned to him, appellant stated that the claimant was very belligerent over the telephone and “constantly threatened me.” When he terminated the claimant’s compensation benefits, the claimant held a grudge.

Another claimant called and wrote nearly every day threatening appellant, who recalled a fax that the claimant had sent, which went something like this: “Why are you not answering your phone? You can’t ignore me! I’m coming down there and I’m in a knee cap breaking mood!” Appellant stated that he was scared to death of that claimant.

When appellant was on paternity leave in 1997, he learned that the staff in the telephone bank were telling his claimants that he was not in the office because his wife had given birth. He lived in New Jersey and was assigned New Jersey claimants. Appellant filed a complaint because he felt it would be easy for claimants, dozens of whom had threatened him, to track him down by finding him in one of the three maternity wards in Morris County. He never understood why he was not assigned cases from Brooklyn or Albany.

Appellant described cases in which the claimant cried or broke down. He explained how the flawed implementation of the Integrated Federal Employees’ Compensation System, caused many claimants to fall off the rolls, which caused a great deal of stress for the claimants and for appellant, who had to try to deal with them. Appellant described one case in which a widow called screaming and cursing at him and demanding he be fired. “It was really an emotional drain on me.” He stated that it affected his sleep, and after getting off the telephone with her, he would have the shakes.

Appellant also described a claimant who sustained post-traumatic stress syndrome as a result of the World Trade Center attack. “Foolishly, her psychiatrist believed our crap about assisting her to return gracefully back into gainful employment.” He soon saw visions and delusions at work, but at the time there was no such thing as a recurrence of mental stress. Appellant thought it was a travesty to follow the rules. “I received calls from the claimant who

could barely speak coherently and basically screamed and cried and prayed to me. I received calls from the Agency Compensation Specialist & the lady's supervisors who demanded I accept her case and cursed me to Hell when I told them I couldn't." He pleaded his case to his superiors, but he was reprimanded and "put down." "I was disgusted, emotionally frustrated, sick to my stomach."

With respect to caseloads, appellant stated that his constantly went up. Even when he was on a PIP and given a manageable caseload of 80 cases, he checked his list three days later and found that he was assigned 126 cases. Although management told appellant that his caseload went down, cases not showing up on his digit range were assigned to him. He and his union representative brought this up to his supervisor, but he was told in the face of this evidence that it could not happen, that he was wrong or crazy.

As a result of one regional director's rule that all attorney letters, and anything faxed into the office, were to be tracked as congressional inquiries, appellant stated that he went from doing 2 to 4 congressional responses per week to 7 to 10 responses daily. "It was ridiculous & irrational way to raise your numbers." He stated that this regional director, unlike others, returned congressional responses if he did not like the response or the claims examiner's writing style. "[The regional director] constantly changed & rearranged the units to affect his numbers for the quarter." The regional director also set his own standard for timeliness. The national office standard for payment of claims was 14 days; he made it 7 days. The national office standard for congressional responses was 10 days; he made it 4 days. The national office standard for returning calls was 72 hours; he made it 48 hours, which meant if it came in on a Friday and a claims examiner took Monday off, he was late. To make the standard, a claims examiner had to do all his other calls on the same day. "[The regional director] didn't care that we were getting sick."

A new regional director took over in 2010 and returned to the national office standards. "It helped, but [the former regional director] began doing things under handedly to change numbers and punish those like me who went to the [new regional director]."

Appellant complained that he was written up for a congressional response that was 15 days late, except he knew that he did it the day it was assigned to him. He tried to find it in the electronic folder, but it was not there. It seemed someone in management had labeled the document a hidden file. Since appellant sent the document directly to the district director, he asserted it only made sense that he was the one who did it, mistakenly or maliciously. Although he had done the response days ahead of time, he had to sit through three meetings in which he was reprimanded. "Finally, the union had the reprimand removed from my file. This went on over and over."

Appellant's psychotherapist, Heather Schorr Kourpas, a licensed clinical social worker, advised an OIG special agent on March 29, 2011 that, while appellant struggled with difficulties in his personal life, including divorce and financial problems, work remained the one constant in his life that was a positive for him. "But lately, [appellant] feels someone is out to get him, and work is becoming increasingly stressful."

In a decision dated September 27, 2013, an OWCP hearing representative found that appellant had failed to establish a compensable factor of employment.

Appellant requested reconsideration and submitted a medical report from Dr. M. Allan Cooperstein, a licensed psychologist, who reviewed appellant's detailed statement regarding the stressors that he experienced while performing his duties as a claims examiner. Dr. Cooperstein also reviewed appellant's job description, which required accepting criticism and dealing calmly and effectively with high-stress situations. He concluded that there was little doubt that stressors at work, including the impact of cases and the supervisor atmosphere, contributed to appellant's diagnosis of post-traumatic stress disorder, and depression.

In a decision dated December 16, 2013, OWCP denied appellant's reconsideration request. It found that the evidence submitted in support thereof was substantially similar to evidence previously considered. The evidence was also irrelevant or immaterial. Further, OWCP noted that it was the adjudicatory function of OWCP, not the attending physician, to make findings of fact whether the events to which a claimant attributes his condition are factors of employment.

On appeal, appellant's representative argues that appellant has submitted abundant factual evidence to support that he experienced compensable stressors while working as a claims examiner. He argues that the position of claims examiner is inherently stressful, and that appellant has described in great detail specific instances of stress during the course of his employment, which the employing establishment did not dispute.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹⁶ Workers' compensation does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹⁷

Workers' compensation does not cover an emotional reaction to an administrative or personnel action unless the evidence shows error or abuse on the part of the employing establishment.¹⁸

¹⁶ 5 U.S.C. § 8102(a).

¹⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁸ *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991).

As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁹ In claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his or her allegations of stress. The claimant must specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived “harassment,” abuse or difficulty arising in the employment is insufficient to give rise to compensability under FECA. Based on the evidence submitted by the claimant and the employing establishment, OWCP is then required to make factual findings, which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.²⁰

The Board has held that conditions related to stress resulting from situations in which a claimant is trying to meet his or her position requirements are compensable under *Lillian Cutler*.²¹ As with harassment, it is not enough simply to allege a compensable factor of employment. Appellant has the burden to submit probative and reliable evidence to corroborate the factor alleged.²²

ANALYSIS -- ISSUE 1

When appellant filed his claim for workers’ compensation benefits, he identified on the claim form itself an incident that took place on March 25, 2011. Appellant’s supervisor had placed him on administrative leave and sent OIG agents to search his house and interview him for threatening employees and being a danger to himself. He suggested that this was in error, as no discipline was ever imposed, no warnings were ever given, and the agents dropped the investigation for lack of evidence. Appellant indicated that he first became aware his disease or illness was caused or aggravated by his employment on March 25, 2011, the date OIG agents appeared at his door.

This incident thus appears to have prompted appellant’s claim for benefits. The act of placing him on administrative leave and initiating an investigation, however, was not a *Cutler* employment factor. It was an administrative action undertaken by his superiors. As such,

¹⁹ See *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant’s allegations of unfair treatment to determine if the evidence corroborated such allegations).

²⁰ *Paul Trotman-Hall*, 45 ECAB 229 (1993) (Groom, Alternate Member, concurring).

²¹ *E.M.*, Docket No. 12-999 (issued October 10, 2012); *Richard H. Ruth*, 49 ECAB 503 (1998).

²² *R.W.*, Docket No. 13-399 (issued September 26, 2013).

appellant has implicated something that falls, as a general rule, outside the scope of FECA's coverage.²³

There is an exception to this general rule, but appellant has produced no probative evidence of administrative error or abuse in this matter. If he has obtained a final decision in his favor from a grievance or a Merit Systems Protection Board complaint, he has not submitted this evidence to support his claim. That the investigation found no threat does not establish that management acted unreasonably under the circumstances. Accordingly, the evidence does not establish that this incident falls within the exception to the general rule that emotional reactions to administrative or personnel matters are not compensable.

The Board notes that when OIG agents interviewed appellant's psychotherapist, Ms. Kourpas, on March 29, 2011, she advised that appellant struggled with difficulties in his personal life, including divorce and financial problems, but that work remained the one constant in his life that was a positive for him. This does appear inconsistent with the notion that work stress prior to the March 2011 OIG incident caused an emotional injury. After pointing to work as a positive factor in appellant's life, the psychotherapist advised that lately, he felt that someone was out to get him, and that work was becoming increasingly stressful. This is consistent with the date appellant first became aware of his disease or illness and the date he first realized it was caused or aggravated by work.

Appellant has identified *Cutler* factors in support of his claim. *Cutler* factors, which would be compensable if established by the factual evidence, include meeting the demands of his position. Appellant's position description describes the major duties and responsibilities, including having to interact with claimants. The Board finds that the specifics in his particular case are not established by the evidence.

Appellant has offered a number of accounts, based on his remembrances of things past, events, or telephone conversations that took place, in some cases, many years ago. Without probative and reliable evidence to corroborate the factors alleged, OWCP cannot accept those accounts as factual without the risk of allowing appellant to self-certify his disability. It cannot accept, for example, that certain claimants threatened him and his family. There is simply no corroborating evidence. The employing establishment confirmed that many claims were filed as a result of the World Trade Center attack in 2001, but a change in appellant's actual workload is not established by the evidence. As appellant explained it, his caseloads were always unmanageable. If he was already working at capacity, it is not clear how an influx of cases after the attack affected the amount of work he did in a day.

As the Board noted earlier, it is not enough simply to allege a compensable factor of employment. Appellant presents a case that hinges almost exclusively on allegations with no evidence to document the dates or the substance of incidents alleged.

²³ See *Sandra F. Powell*, 45 ECAB 877 (1994) (as an investigation is generally related to the performance of an administrative function of an employer and not to the employee's regular or specially assigned work duties, it is not a compensable factor of employment unless there is affirmative evidence that the employing establishment either erred or acted abusively in the administration of the matter).

The record does contain the statement of a friend, someone who did not work with appellant. Her account is hearsay. She could relate only what appellant had told her about his job. A coworker submitted a statement, but she, too, had to rely on what appellant shared with her about management's actions. She had her own opinion of management, but this did not establish a compensable factor of employment in support of appellant's claim.

Appellants also alleges dissatisfaction with a job that he felt was not like others he had held and liked. His frustration from not working in a particular environment or holding a more desirable position is not compensable. Appellant's disagreement with instructions on how to dispose of a claim is also not compensable. Not receiving a passing evaluation in the last few years, being placed on two separate PIPs, and being placed in retraining are likewise not compensable factors. Indeed, without proof of error or abuse, none of the alleged actions by management is compensable.

Appellant spent a significant amount of time discussing his relationship with a man who was hired at the same time. This claims examiner was promoted to supervisory claims examiner and eventually to the position of regional director. Appellant described the difficulties he and others had with this person's management. Again, there is no proof of error or abuse. Any emotional reaction appellant had in response to this superior is not compensable.²⁴

Appellant also described how his building became a holding prison for a time after the World Trade Center attack in 2001. The employing establishment confirmed that a separate floor of the building served as a holding prison, and a security presence was implemented around the perimeter, as it was in other federal buildings in the aftermath of the terror attacks. Any fear or insecurity appellant might have felt as a result of these actions did not arise in the performance of his duty and must be regarded as self-generated.

Appellant's representative argues that appellant has submitted abundant factual evidence to support that he experienced compensable stressors while working as a claims examiner. To the contrary, appellant has merely submitted abundant allegations, that are uncorroborated by evidence and which are not sufficient to establish a factual basis for his claim. The position of claims examiner might be inherently stressful, but without evidence documenting the specifics of appellant's particular case, the case cannot move forward on the substance of the claim that he presents. As appellant has not established a factual basis for his claim, the Board will affirm OWCP's September 27, 2013 decision.²⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

²⁴ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA. See *William H. Donaldson*, Docket No. 02-2102 (issued February 19, 2003); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

²⁵ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Margaret S. Kryzcki*, 43 ECAB 496 (1992).

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.²⁶ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must 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.²⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.²⁸ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²⁹

ANALYSIS -- ISSUE 2

OWCP received appellant's reconsideration request within one year of the most recent merit decision in her case, namely, OWCP's September 27, 2013 decision denying his emotional condition claim. Appellant's request is therefore timely. The question for determination is whether that request met at least one of the standards for obtaining a merit review of his case.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. The request did not advance a relevant legal argument not previously considered by OWCP. Instead, appellant submitted a medical report from Dr. Cooperstein, a licensed psychologist. To be clear, Dr. Cooperstein is qualified to render an opinion on causal relationship, which is not the issue in this case. He is not qualified to make findings of fact. Dr. Cooperstein's review of appellant's statement regarding the stressors he experienced as a claims examiner does not corroborate the allegations that appear in appellant's statement; it simply reiterates them. The Board therefore finds that the evidence submitted to support appellant's reconsideration request does not constitute relevant and pertinent new evidence.

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening his case, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's December 16, 2013 nonmerit decision.

²⁶ 5 U.S.C. § 8128(a).

²⁷ 20 C.F.R. § 10.606.

²⁸ *Id.* at § 10.607(a).

²⁹ *Id.* at § 10.608.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained an emotional condition in the performance of duty. The Board also finds that OWCP properly denied his reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the December 16 and September 27, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 15, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board