

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

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**T.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
East Hampton, NY, Employer**

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**Docket No. 10-2336  
Issued: September 28, 2011**

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

Oral Argument September 7, 2011

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 20, 2010 appellant filed a timely appeal from a June 10, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration without further merit review. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed from March 8, 2010, the date of the most recent OWCP merit decision, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 10, 2009 appellant, then a 49-year-old former letter carrier, filed an occupational disease claim alleging that he sustained post-traumatic stress disorder on the job. He became aware of his condition and its relationship to his employment on June 22, 2006. Appellant resigned effective April 14, 2006.

A May 7, 2009 letter from a physician's assistant noted that appellant was arrested at work sometime in mid-March 2006 and thereafter experienced anxiety. He opined that the arrest was "certainly the precipitating factor for [appellant's] anxiety."<sup>2</sup>

The employing establishment controverted the claim in a May 28, 2009 letter, arguing *inter alia* that it was filed more than three years after the alleged work incident and that appellant did not submit sufficient medical evidence.

OWCP informed appellant in a June 1, 2009 letter that the evidence was insufficient to establish his claim. It gave him 30 days to submit a factual statement describing the March 2006 employment incident and a comprehensive report from a psychiatrist or clinical psychologist explaining how the purported incident contributed to his emotional condition.

Appellant specified in a June 24, 2009 statement that he was arrested on March 2006 for damaging the vehicle of Adil Chohan, a coworker and union steward. He attached his April 7, 2006 letter of resignation. Which explained that appellant had told his supervisor of the "anguish and anxiety that [he] was feeling physically and mentally ... due to the incident. Appellant advised that he experienced anguish, anxiety, nausea and other symptoms due to Mr. Chohan's false accusation and the arrest and was prescribed antidepressant medication. He noted that he was resigning after exhausting his annual and sick leave to cope with his worsening condition and when the postmaster refused to grant additional leave or transfer Mr. Chohan.

By decision dated November 5, 2009, OWCP denied appellant's claim, finding the evidence insufficient to establish that the March 2006 employment incident occurred as alleged.

Appellant requested reconsideration on December 10, 2009 and furnished additional evidence. In a March 12, 2009 statement, he detailed that he had loaded his postal truck with mail and was ready to proceed with deliveries on the morning of March 17, 2006 when he was told by Mr. Chohan that the postmaster wanted to speak with him. Two hours later, appellant returned from his route and met with the postmaster, two supervisors and police officers. He was then informed that Mr. Chohan accused him of slamming a mail cart into his personal vehicle. Although appellant denied the charge and his supervisors found that the cart did not line up with the dents and scratches on Mr. Chohan's vehicle,<sup>3</sup> he was arrested, fingerprinted and photographed. He notified a supervisor who picked him up at the police station that he did not

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<sup>2</sup> Appellant also submitted a May 7, 2009 letter from a licensed master social worker who commented that an "unfortunate occurrence" in 2006 resulted in his post-traumatic stress disorder.

<sup>3</sup> The employing establishment also conceded in its May 28, 2009 letter of controversion that a consensus of eyewitnesses established that appellant did not commit the act.

want to return to work on account of illness and was allowed to go home. The following day, appellant visited a family practitioner and presented mental anguish, anxiety and depression. He asked the postmaster to transfer Mr. Chohan, who had less seniority or grant additional leave time. As both requests were denied, appellant resigned.

In an October 19, 2009 report, Dr. Mary Ann Juliano, a clinical psychologist, summarized the events of March 17, 2006 and diagnosed post-traumatic stress disorder. She opined that appellant's condition arose from his arrest and persisted for several years, noting symptoms such as a rapid heart rate, nausea, sweating, stomach problems and breathlessness.

By decision dated March 8, 2010, OWCP modified the November 5, 2009 decision to find that appellant did not file a timely claim.

Appellant requested reconsideration on March 29, 2010 and argued that the employing establishment "knew that I was ill due to the arrest" and asked for time off before resigning. He further contended that he was unaware that he sustained post-traumatic stress disorder until he was diagnosed in June 2006.<sup>4</sup>

By decision dated June 10, 2010, OWCP denied appellant's request for reconsideration, finding that he did not present new evidence or raise legal contentions warranting further merit review.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>5</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Where the request for reconsideration fails to meet at least one of these standards, the OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant showed on reconsideration of the November 5, 2009 merit decision that OWCP erroneously applied or interpreted a specific point of law.<sup>8</sup>

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<sup>4</sup> In addition, appellant submitted a copy of his March 12, 2009 statement.

<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

<sup>8</sup> See *Charles A. Jackson*, 53 ECAB 671 (2002).

Section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>9</sup> If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.<sup>10</sup>

OWCP found that the claim was untimely filed by decision dated March 8, 2010. On reconsideration, appellant asserted that the employing establishment had knowledge of his emotional condition stemming from the March 17, 2006 arrest before he resigned on April 14, 2006, a period of time encompassing less than 30 days. Nonetheless, OWCP issued a June 10, 2010 decision improperly concluding that he did not raise any legal contentions warranting further merit review.

The standard for reopening a claim for merit review does not require the claimant to submit all evidence that may be necessary to discharge his burden of proof.<sup>11</sup> Furthermore, a request for reconsideration predicated on a legal premise need only contain an assertion of an adequate legal premise having some reasonable color of validity.<sup>12</sup> In this case, appellant raised a valid argument that OWCP erroneously applied or interpreted section 8122(a) of FECA as well as the accompanying regulations as he stated that OWCP knew of his work-related injury and it was obligated to conduct a merit review of the claim. He had not previously raised this assertion with regards to whether his claim was timely filed. Therefore, the case shall be remanded to OWCP to conduct a merit review of the entire record. After such further development as is deemed necessary, OWCP shall issue an appropriate merit decision.<sup>13</sup>

### CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>9</sup> 5 U.S.C. § 8122(a).

<sup>10</sup> 20 C.F.R. § 10.100(b)(1). *See also* 5 U.S.C. § 8122(a).

<sup>11</sup> *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>12</sup> *See Daniel O'Toole*, 1 ECAB 107 (1948).

<sup>13</sup> The Board notes appellant's contention on oral argument that he did not file a claim for more than three years because he did not know that an emotional condition was compensable and the employing establishment did not provide guidance on the matter. The Board has held that ignorance of the law does not excuse failure to file a timely claim. *See, e.g., Fred L. Ingram*, 30 ECAB 959 (1979); *John Santak*, 16 ECAB 440 (1965).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further merit review.

Issued: September 28, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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