



On appeal, appellant's representative contends that the evidence submitted by appellant established his allegations of bullying, intimidation, harassment and hostile work environment, which caused his aneurysm or stroke.

### **FACTUAL HISTORY**

On December 20, 2008 appellant, then a 49-year-old manager, customer services, filed an occupational disease claim alleging that on April 29, 2003 he first realized that his stress-related aneurysm or stroke was a result of harassment and a hostile work environment. He asserted that James Brown, his supervisor, bullied, intimidated and harassed him at meetings and in front of employees he supervised during the period April 18 to 29, 2003. Appellant contended that Mr. Brown pressured him on his daily tasks and work goals and subjected him to inappropriate verbal condemnation. He alleged that during the week of April 20, 2003 Mr. Brown became impatient and accused him of getting him up to speed on the position. Appellant alleged that Mr. Brown threatened him and kept pointing a finger during a meeting with management on April 28, 2003. He alleged that on April 29, 2009 Mr. Brown told him that he was being held personally responsible for conducting a meeting instructing employees that tours began at 7:00 a.m. Appellant became ill and that following the talk he started to fall and was taken to the emergency room.

Appellant provided a list of witnesses and reports from his treating physicians, Dr. Ricardo J. Plasencia, a neurologist, Dr. I. Jack Abramson, a Board-certified psychiatrist, and Nivea R. Ribas to support his claim of harassment and bullying by Mr. Brown. On March 1, 2007 Dr. Plasencia attributed appellant's aneurysm to his uncontrolled hypertension. Dr. Abramson related on December 16, 2008 that appellant provided him a narrative of events for the period April 18 to 29, 2003, which appellant alleged constituted harassment, anxiety, stress, agitation, hostility and intimidation. Based on his review of appellant's statement, he attributed appellant's current condition to his noxious workplace situation.

By correspondence dated February 11, 2009, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide such information.

In response to OWCP's request, appellant submitted a statement detailing incidents causing the hostile work environment. He alleged that on May 15, 2008 Betty Alexander, his then supervisor, instructed him while he was on the computer in an aggressive and hostile manner to get into another computer program. Appellant also alleged that she yelled and pointed her finger at him. He submitted witness statements from coworkers, Irvin Lyons, Jr., Ernest Hall and Sandra Fulcher. Appellant also submitted medical evidence including an April 15, 2009 report from Dr. Paul E. Jacobsen, a treating Board-certified family practitioner.

Mr. Lyons and Mr. Hall provided witness statements for the events occurring on April 28 and 29, 2003 involving Mr. Brown. Both noted that at a meeting on April 28, 2003 Mr. Brown's body and verbal language toward appellant appeared tense and hostile. Mr. Lyons and Mr. Hall also related that during the meeting Mr. Brown pointed a finger at appellant while talking to him. They were both present on April 29, 2003 when they witnessed appellant collapsing and falling to the floor following a service talk with employees.

In her statement, Ms. Fulcher stated that she witnessed appellant having a panic attack on August 13, 2008, which he attributed to aggressive behavior by Ms. Alexander, a postmaster. She noted that subsequently he related to her that he continued to have anxiety attacks as a result of the August 13, 2008 aggressive conversation with Ms. Alexander.

On April 15, 2009 Dr. Jacobsen diagnosed severe stress disorder, labile hypertension and cerebrovascular accident. He attributed appellant's stroke to a hostile work environment and verbal assaults by appellant's supervisor.

On April 23, 2009 OWCP received a May 7, 2003 discharge summary from Palmetto General Hospital relating that appellant was admitted on April 29, 2003 for intracerebral bleeding. It noted that he had a history of high blood pressure and had not been taking his medication for the past two weeks.

By decision dated August 13, 2009, OWCP denied appellant's claim on the grounds that he did not establish any compensable employment factors. It found that he failed to establish that he was subjected to a hostile work environment, harassment, verbal abuse or inappropriate administration actions by Mr. Brown.

On August 29, 2009 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on December 15, 2009.

By decision dated March 4, 2010, an OWCP hearing representative affirmed the August 13, 2009 decision denying appellant's claim. He found that appellant had not established any error or abuse by Mr. Brown's instructions to him. The hearing representative also found that appellant failed to establish any verbal abuse or harassment by his supervisor.

In a March 1, 2011 letter, appellant requested reconsideration. He contended that the evidence he submitted established that he was subjected to a hostile work environment. Appellant submitted definitions of psychological and emotional abuse and workplace bullying by the U.S. Department of Justice and the employing establishment's policy on workplace harassment to support his allegation that he was subjected to harassment and bullying which caused his aneurysm or stroke on April 29, 2003. He also submitted an August 24, 2010 e-mail sent to a Manuel V. Ferrer concerning a hostile work environment and incidents occurring in 2009 and 2010 and a January 21, 2011 e-mail sent to management requesting a meeting to discuss his concerns on the hostile work environment.

By nonmerit decision dated March 18, 2011, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### ANALYSIS

Appellant claimed that the aneurysm or stroke he had on April 29, 2003 was due to harassment and bullying by his supervisor, Mr. Brown and a hostile work environment. OWCP denied his claim on the grounds that he failed to submit any evidence supporting his allegations of bullying and harassment by his supervisor or a hostile work environment. The issue to be resolved on appeal is whether appellant advanced relevant legal argument not previously considered by OWCP, submitted relevant pertinent new evidence or showed that OWCP erroneously applied or interpreted a point of law.

In support of his timely March 1, 2011 reconsideration request, appellant argued that OWCP erred in finding that the evidence he submitted was insufficient to support his allegations of a hostile work environment, bullying and harassment. He submitted definitions of psychological and emotional abuse and workplace bullying by the U.S. Department of Justice and the employing establishment's policy on workplace harassment in support of his contention. Appellant also submitted copies of e-mails he sent alleging new work factors showing a hostile work environment in 2009 and 2010. The policy statements he submitted from the U.S. Department of Justice and the employing establishment do not address the specifics of his allegations. This evidence provides definitions of psychological and emotional abuse, workplace bullying by an agency and a guideline from the employing establishment on its harassment policy. The evidence submitted by appellant does not address the incidents he alleged caused or contributed to his medical condition. In addition, the U.S. Department of Justice definitions and employing establishment's work policy do not establish whether the allegations he made were factual and compensable under FECA. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.<sup>6</sup> As they do not address appellant's allegations, they are insufficient to support his claim. Emotional claims require that a claimant establish a factual basis by supporting allegations with probative and reliable evidence. Perception and feelings alone are not compensable.<sup>7</sup> However, appellant did not include any additional supporting evidence

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>4</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>5</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>6</sup> *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>7</sup> *Margret S. Krzycki*, 43 ECAB 496 (1992).

verifying the new work factors he alleged in the e-mails he submitted with his request. The Board finds that the mere statement of previously alleged and new work factors does not address the underlying issue of verification and corroboration and is not sufficient to require OWCP to reopen the claim for merit review.<sup>8</sup>

The Board finds that appellant has not established that OWCP improperly denied his request for further review of the merits of its August 13, 2009 decision under section 8128(a) of FECA, because the evidence and argument he submitted did not to show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute relevant and pertinent new evidence not previously considered by OWCP.

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> See *Diedra A. Spencer*, Docket No. 02-991 (issued October 2, 2002) (where the Board found that appellant's listing of new and previously alleged work factors was not sufficient to require OWCP to reopen her emotional condition case. The Board determined that the statement described her allegations but did not establish that the alleged employment incidents actually occurred. Thus, it did not constitute relevant evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 18, 2011 is affirmed.

Issued: January 18, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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