

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

F.S., Appellant)	
)	
and)	Docket No. 12-1153
)	Issued: October 25, 2012
DEPARTMENT OF VETERANS AFFAIRS,)	
CENTRAL ARKANSAS VETERANS)	
ADMINISTRATION HEALTH CARE SYSTEM,)	
Little Rock, AK, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 2, 2012 appellant filed a timely appeal from a March 14, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim and an April 25, 2012 decision that denied his request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment; and (2) whether OWCP properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal appellant generally asserts that his claim should be accepted.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On December 29, 2011 appellant, then a 45-year-old police officer, filed an occupational disease claim alleging that he sustained severe anxiety and stress, followed by a severe migraine headache caused by stress at work. He was first aware of his condition and its relationship to his employment on December 5, 2011, when he stopped work.

By letter dated February 10, 2012, OWCP advised appellant of the evidence needed to support his claim. It requested a description of the employment-related incidents he believed contributed to his condition and a narrative medical report that diagnosed a psychiatric condition and explained how it was causally related to the employment factors. Appellant was given 30 days to respond. OWCP also requested that the employing establishment respond to the claim.

In a December 5, 2011 statement, Tonya M. Hightower, chief of the police service, stated that she and Officer Robert Kersten spoke to appellant regarding a detail at 9:05 a.m. that day, and that an administrative inquiry was ongoing. Appellant began to tear up, lose color, and breathe very rapidly and indicated that he was having chest pains. Chief Hightower stated that she terminated the meeting and called firefighters, who evaluated appellant and took him by ambulance to a local hospital for treatment. Officer Kersten accompanied appellant. He later called Chief Hightower and reported that appellant had an anxiety/panic attack.

Lana L. Cunningham, a coworker, reported that on December 5, 2011 appellant and Officer Kersten came to the police station for a meeting with Chief Hightower. Ms. Cunningham stated that the door of the Chief's office remained open after the meeting began at around 8:55 a.m. and she did not hear any raised voices or abnormal conversation. After about 15 minutes, she heard the Chief Hightower and Officer Kersten ask appellant if he was all right. Appellant then left Chief Hightower's office appearing to be short of breath. Ms. Cunningham called help.

By decision dated March 14, 2012, OWCP denied the claim. It found that appellant had not responded to the February 10, 2012 letter with either a description of the work incident or incidents that he felt caused his condition or a narrative medical report.

On April 2, 2012 appellant requested reconsideration and submitted a chest x-ray report, obtained in an emergency room on December 5, 2011 and interpreted as normal.

In an April 25, 2012 nonmerit decision, OWCP denied appellant's reconsideration request on the grounds that the medical evidence was irrelevant as he had not established a compensable factor of employment.²

LEGAL PRECEDENT -- ISSUE 1

To establish a stress-related condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that

² OWCP initially issued a decision on April 18, 2012 that contained a typographical error.

the identified compensable employment factors are causally related to his stress-related condition.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁰ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet his burden of proof to establish that he sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

By letter dated February 10, 2012, appellant was instructed to submit a description of the employment incidents that contributed to his stress. His claim form had made only general reference to unnecessary stress at work on December 5, 2011. Appellant's allegation of stress that day is vague and insufficient to meet his burden of proof. As noted, in order to establish his claim, appellant must submit factual evidence identifying specific employment factors or

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

⁷ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *M.D.*, 59 ECAB 211 (2007).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

incidents alleged to have caused or contributed to his condition.¹² Appellant was also instructed to provide a medical opinion that diagnosed an emotional condition and explained its relationship to factors of his federal employment. He failed to provide the requested evidence. As appellant did not submit the requested information, he did not establish that he sustained a stress-related condition in the performance of duty on December 5, 2011 or to other factors of his employment. OWCP properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.¹³ Section 10.608(a) of Title 20 of the Code of Federal Regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).¹⁴ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵ Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁶

ANALYSIS -- ISSUE 2

With his April 2, 2012 reconsideration request, appellant merely checked an OWCP form requesting reconsideration. He did not allege or establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered. Consequently, appellant was not entitled to a review of the merits of his claim based on the first and second requirements under section 10.606(b)(2).¹⁷

With respect to the third requirement under section 10.606(b)(2), appellant submitted a December 5, 2011 chest x-ray report. The underlying issue in this case is whether he established a compensable factor of employment giving rise to his claimed condition. The chest x-ray report is irrelevant to this issue.

¹² *Leslie C. Moore, supra* note 3.

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.608(a) (2011).

¹⁵ *Id.* at § 10.606(b)(3) (2011).

¹⁶ *Id.* at § 10.608(b) (2011).

¹⁷ *Id.* at § 10.606(b)(2).

Appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered. OWCP properly denied his reconsideration request.¹⁸

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.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a stress-related condition in the performance of duty causally related to factors of federal employment. The Board further finds that OWCP properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).¹⁹

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 25 and March 14, 2012 are affirmed.

Issued: October 25, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁸ *Supra* note 15.

¹⁹ The Board notes that appellant submitted medical evidence with his appeal to the Board. The Board cannot consider this evidence; however, as its review of the case is limited to the evidence that was before OWCP at the time it rendered its final decision. 20 C.F.R. § 501.2(c)(1).