

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

M.S., Appellant)	
)	
and)	Docket No. 12-1555
)	Issued: October 24, 2012
U.S. POSTAL SERVICE, NETWORK)	
DISTRIBUTION CENTER, Memphis, TN,)	
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 July 12, 2012 appellant filed a timely appeal from the February 13, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied his reconsideration request. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision. Since more than 180 days elapsed from the last merit decision of January 20, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 2, 2010 appellant, a 40-year-old supervisor of maintenance, filed a traumatic injury claim alleging post-traumatic stress disorder that date as a result of talking to the inspection service and to human resources. The employing establishment issued a Form CA-16 authorizing examination and treatment for up to 60 days.

The record indicates that appellant previously filed a claim for stress resulting from a threat on July 21, 2010, when a coworker told him that “he was going to hurt me with violence when he catches me outside the NDC [Network Distribution Center].” OWCP denied this claim on September 7, 2010.²

A postal inspector interviewed appellant on October 30, 2010 about any threats he received since returning to work approximately one month earlier. Appellant advised that the same coworker stared at him on several occasions and, on one occasion, passed him while operating a tug and stated, “Watch yourself.” The inspector explained to appellant that a tug operator might reasonably make such a statement to a pedestrian passerby. Appellant denied any other statements that might constitute a credible threat of physical violence. The inspector closed the matter with no need to interview the coworker, but recommended that the plant manager advise the coworker to avoid any unnecessary comments to appellant. The plant manager stated that he reminded the coworker to be professional and show appellant the proper respect an employee should give a supervisor, which the coworker assured he would do.

On November 22, 2010 the plant manager informed OWCP that an exhaustive effort was made to investigate each claim made by appellant. Management requested and assembled a Threat Assessment Team comprising managers domiciled in Tennessee but who did not work with or have any reporting relationship to the Memphis NDC. The team interviewed witnesses that were reported to have some knowledge of appellant’s complaint, but appellant did not make himself available to the team. The Threat Assessment Team found no credible threat. The manager advised that their report was located in Nashville with the manager of human resources for the Tennessee District. The plant manager further advised OWCP that the postal inspector did not complete an investigative memorandum as there was no credible threat found.

In a January 20, 2011 decision, OWCP found that appellant had not established a compensable factor of employment. It found that interviews were administrative actions, not part of his regular duties and were not covered by workers’ compensation absent evidence of administrative error or abuse.

On December 13, 2011 appellant requested reconsideration. He argued that his manager violated the law by willfully failing to provide the report of the U.S. Inspection Service, which informed the manager that he must take administrative action against the coworker for death threats. Appellant stated that he asked the manager for a copy of the report, but the manager advised that he would not do a report. He stated that the manager instructed him to fill out a

² OWCP File No. xxxxxx107. That case is not before the Board on this appeal.

Form CA-1 but would not write or send any statements to OWCP or give him a copy so he could receive medical treatment, which appellant charged was a violation of 18 U.S.C. § 1922.³

In a February 13, 2012 decision, OWCP denied appellant's request for reconsideration of his case. It found that he submitted no evidence that would support his claim that he sustained a post-traumatic stress disorder as a result of meeting or speaking with personnel from human resources or the inspection service. Appellant submitted no proof that he was harassed or threatened in these meetings or that the employing establishment acted abusively or erred in the handling of the investigation. OWCP found that his argument on reconsideration was insufficient to warrant a merit review of his case.

On appeal, appellant argues that the employing establishment refused to provide OWCP with postal inspection reports and refused him medical treatment. He stated that he told his managers that this evidence was crucial, but they refused to provide him with a Form CA-16 or the inspection service reports.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁴ 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.⁵

A request for must be received by OWCP within one year of the date of OWCP decision for which review is sought.⁶ 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.⁷

ANALYSIS

The issue presented on appeal is whether appellant's timely reconsideration request required OWCP to reopen his case for a merit review. In his December 13, 2011 reconsideration

³ The record shows that the employer issued a Form CA-16 on November 2, 2010.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606.

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608.

request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law in denying his November 2, 2010 traumatic injury claim. OWCP denied his claim because he failed to establish a compensable factor of employment. The interview appellant had with the inspection service and human resources, to which he attributed his post-traumatic stress disorder, was an administrative matter and he submitted no proof of administrative error or abuse in the conduct of this interview.

Appellant did not advance a new and relevant legal argument. He argued that his manager would not give him a copy of the inspector's report. The record, however, contains the inspector's discussion of his interview with appellant, his finding that appellant had not established a credible threat of physical violence and his decision to close the matter. It also contains the inspector's informal recommendation that the plant manager advise the coworker to avoid any unnecessary comments to appellant. This does not support appellant's assertion that the inspector directed the manager to take administrative action against the coworker, only that the coworker should try to avoid any comments that might lead appellant to file more complaints. In any event, the manager's alleged failure to provide appellant with a copy of the inspector's report is not relevant to the grounds upon which OWCP denied appellant's claim for compensation. Indeed, there appears to be no such report. The plant manager explained that the postal inspector did not prepare an investigative memorandum because appellant had shown no credible threat.

Appellant did not submit any relevant and pertinent new evidence to support his reconsideration request.

The Board finds that appellant did not meet any of the standards warranting a reopening of his case for a merit review. As OWCP properly denied his reconsideration request, the Board will affirm OWCP's February 13, 2012 decision.

On appeal, appellant restates what he argued in his reconsideration request, but he did not attempt to show how his request met at least one of the standards for obtaining a merit review of his case.

CONCLUSION

The Board finds that OWCP properly denied appellant's reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 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