

ISSUE

The issue is whether OWCP properly denied appellant's December 10, 2010 claim for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 16, 2009 appellant, then a 49-year-old park ranger, filed an occupational disease claim alleging that he developed post-traumatic stress disorder as a result of the stress-related incidents he encountered on a daily basis in the performance of duty. He specifically mentioned that he was assaulted by suspects on two different occasions. Appellant became aware of his condition and realized that it resulted from his employment on June 12, 2009.

By letter dated November 19, 2009, OWCP advised appellant that no evidence was submitted to establish his claim and requested additional evidence.

In a November 27, 2009 statement, appellant described September 12, 1999 and September 5, 2002 lightning strikes which occurred at work, an April 24, 2005 suicide that he witnessed, a November 30, 2007 exposure to an unknown chemical, and April 30 and June 6, 2009 assaults by individuals at work. He alleged that these various scenarios resulted in daily stress which led to thoughts of suicide, nightmares, hypervigilance, detachment from family and friends and an inability to concentrate.

In a February 19, 2010 statement, Kim Coast, the operations supervisor at the employing establishment, reported that she reviewed appellant's November 27, 2009 statement and verified that the statement was accurate and relevant to his claim. She noted that she fully supported and concurred with appellant's allegations and had no points of disagreement.

By decision dated April 1, 2010, OWCP denied appellant's emotional condition claim. It accepted that the employment factors occurred as alleged but denied his claim finding insufficient medical evidence to establish that he sustained a diagnosed emotional condition as a result of the accepted employment factors.

On May 6, 2010 appellant submitted a request for reconsideration. He stated that he included a report from Dr. Joel Fay, a psychologist, which addressed the requirements needed for reconsideration of his claim.

In a decision dated May 25, 2010, OWCP denied further review of appellant's claim finding that no evidence was received to support his request for reconsideration.

On July 6, 2010 appellant again requested reconsideration. He believed that Dr. Fay's letter was specific and relevant to his case. Appellant also noted that he was submitting additional medical reports that specifically addressed his post-traumatic stress disorder.

In an April 27, 2010 report, Dr. Fay related that appellant worked for 19 years at the employing establishment and was a victim of assaults, witnessed a suicide and was struck by lightning twice. He opined that appellant was diagnosed with post-traumatic stress disorder in

the severe range. Dr. Fay reported that the primary cause of appellant's condition appeared to be several critical incidents experienced at work.

In a June 20, 2010 psychiatric report, Dr. Peter J. Walsh, a Board-certified psychiatrist, stated that he had treated appellant for the psychological aftermath of two recent terrifying assaults, being struck by lightning twice and being attacked by a bear while on the job. He reported that testing showed classic evidence of post-traumatic stress disorder with no other psychiatric illness, marked hypervigilance, stimulus overload and impulsivity to deal with the overload.

In a December 21, 2009 report, Dr. Nancy Van Couvering, a psychologist, related appellant's complaints of intense post-traumatic hypnagogic hallucinations, hyperesthesia to touch in the shower and elsewhere and self-described hypervigilance. She stated that appellant presented a pretty clear linkage of traumatic memories of personal experiences and on-the-job experiences including two recent assaults, being struck by lightning and being attacked by a bear.

By decision dated September 29, 2010, OWCP denied modification of the April 1, 2010 decision finding insufficient medical evidence to establish that he sustained post-traumatic stress disorder as a result of his employment.

In a letter dated December 10, 2010, appellant, through counsel, requested reconsideration of the September 29, 2010 decision. He noted that a report from Dr. Walsh clearly established causal relationship.

On May 4, 2011 OWCP requested, via telephone, that appellant's counsel fax Dr. Walsh's report. No evidence was received.

In a decision dated July 15, 2011, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.³ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district Office.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

³ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must also be submitted within one year of the date of OWCP's 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 provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

By decision dated September 29, 2010, OWCP denied modification of the April 1, 2010 denial decision finding that the evidence did not establish that appellant sustained post-traumatic stress disorder causally related to factors of his employment. In a narrative statement dated December 10, 2010, appellant's counsel requested reconsideration. He stated that he included a report from Dr. Walsh, attached as "Exhibit B," which clearly established causal relationship. No evidence was received. The Board notes that submission of this statement did not require reopening appellant's case for merit review. Although appellant stated that he included a new report, no medical report from Dr. Walsh was received along with his reconsideration request. Accordingly, his statement alone is not sufficient to require OWCP to reopen his claim for consideration on the merits.

On appeal, counsel alleged that Dr. Walsh's report clearly established that the causal relationship necessary for the claim to be accepted and submitted additional evidence to support his claim. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal.⁹ Appellant may submit that evidence to OWCP along with a request for reconsideration.

Appellant did not submit any evidence along with his request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or advances a relevant

⁵ 20 C.F.R. § 10.606(b); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

legal argument not previously considered by OWCP. Because he did not meet any of the necessary requirements, he is not entitled to further merit review.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his case for further consideration of the merits of his claim under 5 U.S.C. § 8128.

CONCLUSION

The Board finds that OWCP properly denied appellant's December 10, 2010 request for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board