

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

C.J., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
JESSE BROWN VETERANS)
ADMINISTRATION MEDICAL CENTER,)
Chicago, IL, Employer)

Docket No. 12-1927
Issued: March 29, 2013

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 19, 2012 appellant filed a timely appeal from a May 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) and an August 1, 2012 nonmerit decision. 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 claim.

ISSUES

The issues are: (1) whether appellant has established an emotional condition in the performance of duty as alleged; and (2) whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 14, 2011 appellant, then a 51-year-old former clerk/typist, filed an occupational disease claim asserting that she sustained an emotional condition as a result of her responsibilities and having to wait on others to complete their work so that she could do her work and because she received blame for not having her work done. She indicated that she was hospitalized in 1985 for a nervous breakdown due to the work responsibilities and pressure incurred while working. Appellant claimed she was first aware of her condition on March 7, 1979 and realized it was caused or aggravated by her employment on May 12, 1984. Along with her claim, she submitted her March 26, 2011 statement and notification of action forms dated May 14, 1984 to March 6, 1985. Also submitted was a May 21, 2010 treatment note from Dr. Jagannath Devulapally, a Board-certified psychiatrist, who advised that he treated appellant for chronic mental illness, since March 2008, which rendered her disabled.

In an April 11, 2011 letter, OWCP requested additional factual and medical evidence in support of her claim. It noted that the evidence was insufficient to establish that appellant actually experienced the employment factors alleged to have caused injury; there was no diagnosis of any condition resulting from an employment activity; and a physician's opinion as to how employment activities caused, contributed to, or aggravated her medical condition had not been provided. OWCP asked appellant to describe in detail the employment-related condition or incidents which she believed contributed to her illness along with medical evidence from a qualified physician which provided an opinion as to how employment activities caused, contributed to or aggravated her medical condition.

In response, appellant submitted a June 2, 2011 statement, an April 26, 2011 challenge letter from the employing establishment; Illinois Department of Mental Health and Developmental Disabilities treatment notes dated December 10, 1979 to July 31, 1985; employer treatment records from the 1970s and 1980s; reports from Dr. Devulapally dated June 3 and 17, 2011; Equal Employment Opportunity regulations; and OWCP regulations. In her letter, she stated that she became more delusional from doing the work of other people and waiting on others to complete their work. Appellant stated that this occurred almost every day and that she could not complain to her supervisors and coworkers as she did not want to start any trouble.

By decision dated September 30, 2011, OWCP denied appellant's claim on the grounds that she failed to establish that she sustained an injury as defined under FECA. It found that, while appellant alleged she was given a lot of responsibility, that she would get upset waiting for people to finish their work so she could do her work, and that she would get blamed for not having her work done. Appellant had not provided any specific details surrounding her claim and, without such evidence, there was no factual basis to support her claim.

On March 1, 2012 appellant requested reconsideration. In a February 5, 2012 statement, she stated that her work exposure contributed to her condition as she had to be hospitalized on July 16, 1985 because of the pressure of responsibility that was put upon her, which she claimed was evidence that there was traumatic injury and sickness and decompensation of health. Appellant also submitted reports from Dr. Ann Sarpy, a Board-certified psychiatrist, dated January 24 and February 14, 2012.

By decision dated May 2, 2012, OWCP denied modification of the prior decision. It found that the factual evidence failed to establish that appellant suffered an emotional condition in the performance of duty because her statement was general in nature and she did not describe any specific incidents and conditions that caused her emotional condition or submit any corroborating evidence.

On July 14, 2012 appellant requested reconsideration. In a July 16, 2012 statement, she indicated that, even though she provided an answer to OWCP's questions, OWCP did not modify the second OWCP decision. Copies of previously submitted OWCP regulations and the May 2, 2012 OWCP decision were submitted.

By decision dated August 1, 2012, OWCP denied appellant's reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,³ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁴ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁵ 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 an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁶ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *Lillian Cutler*, *supra* note 3.

⁷ *Kim Nguyen*, 53 ECAB 127 (2001).

In emotional condition claims, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, it should then determine whether the evidence of record substantiates that factor. 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant did not meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of her federal employment. Appellant alleged that her emotional condition occurred due to her responsibilities, having to wait on others to complete their work so that she could do her work, and that she would get blamed for not having her work done. OWCP denied her claim finding that she had not established a factual basis for the claim as she had not provided any specific details surrounding her allegations.

In an April 11, 2011 letter, OWCP requested additional evidence from appellant. It noted that the evidence was not sufficient to establish that she experienced an employment factor alleged to have caused injury. OWCP asked appellant to provide a specific description of the incidents that she believed caused her claimed condition. Although appellant indicated that she had stress from doing the work of other people and waiting on the work of others and that this occurred almost every day, she did not submit a detailed description of what happened at work that caused her claimed stress or provide any corroborating evidence. She did not describe the work of others or explain who improperly blamed her regarding work matters, and she did not reference any specific examples that occurred on particular dates at specific locations. Without a detailed description from appellant regarding the basis of her claim, appellant has not met her burden of proof to establish the factual component of her claim.

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁹ In this case, appellant did not provide a detailed factual statement outlining her claim or provide any corroborating evidence, such as witness statements, to support her claim. Without such evidence appellant failed to provide a factual basis to support her emotional condition claim.

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁰

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹¹ 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 considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹² 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.¹³ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review of the merits.¹⁴

ANALYSIS -- ISSUE 2

On reconsideration, appellant submitted a statement in which she contended that, although she provided answers to OWCP's questions, it failed to modify the first decision. The Board notes that OWCP in its May 2, 2012 merit decision reviewed the factual evidence appellant submitted and found her statement to be general in nature regarding her claim without supporting evidence or specific examples. The Board notes that appellant's general statement does not show that OWCP erroneously applied or interpreted a specific point of law and it does not advance a relevant legal argument not previously considered by OWCP. Furthermore, appellant's statement, while new, is not relevant as it does not contain any supporting evidence or specific examples from which appellant can establish a factual basis for her claim.

Appellant also submitted duplicative copies of OWCP regulations and the May 2, 2012 OWCP decision. This evidence is not relevant to the issue of whether appellant established a factual basis to support her claim. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁵

¹⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Lori A. Facey*, 55 ECAB 217 (2004); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹¹ Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(1)-(2).

¹³ *Id.* at § 10.607(a).

¹⁴ 20 C.F.R. § 10.608(b).

¹⁵ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

Furthermore, the submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.¹⁶

The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.¹⁷

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty. The Board also finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 1 and May 2, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 29, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ See *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Betty A. Butler*, 56 ECAB 545 (2005).

¹⁷ *M.E., id.* (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).