

FACTUAL HISTORY

On the prior appeal,³ the Board found that the factual evidence established one compensable factor of employment: a coworker patted appellant on the back in May 2010 while in his capacity as an electronic technician. The Board added that this physical contact did not rise to the level of harassment. The evidence was sufficient to substantiate only that physical contact occurred sometime in May 2010 and the nature of that contact. The Board remanded the case to OWCP to review the medical opinion evidence on the issue of whether this one incident of physical contact caused or aggravated appellant's diagnosed emotional condition.⁴

On August 29, 2012 OWCP asked appellant to submit an appropriate report from his treating physician. It received a September 6, 2012 report from Dr. Walter E. Afield, a Board-certified psychiatrist with a subspecialty in child psychiatry. Dr. Afield stated that appellant had dealt with significant sexual harassment at work. He noted several documented situations beginning in 2001, including comments by another employee about his sexuality: "They were talking about him taking a fishing trip with other employees to have sex with other men, and were referring to things as 'Brokeback Lake,' all of which was very disturbing to [him]." Dr. Afield added that a coworker apparently rubbed appellant's shoulders as if they were friends, "and it was documented that this employee was to not touch or speak to [appellant] in any type of sexual manner." He also referred to the incident in 2009 in which this coworker walked directly behind appellant and patted on the back the guy sitting next to him. Appellant was very upset and uncomfortable because he was "attuned" to the fact that this coworker was trying to get close to him: the coworker made eye contact with appellant and was directing his comments to appellant. Dr. Afield indicated that the employing establishment did not protect appellant from these inappropriate actions or behaviors, which he characterized as issues of harassment, causing appellant to have an emotional reaction. He stated that appellant was diagnosed with severe anxiety, depression and post-traumatic reactions to these incidents. Dr. Afield concluded: "It is my medical opinion that there is a causal relationship between the perceived harassment that [appellant] was exposed to during the years of working for the [employing establishment], the inefficient job the [employing establishment] did to alleviate it, and his current emotional state at this point."

In an October 31, 2012 decision, OWCP denied appellant's injury claim. It found that the evidence was insufficient to establish that his diagnosed medical condition was causally related to the accepted work incident. OWCP considered appellant's emotional reaction to perceived harassment to be self-generated.

Appellant, through his representative, requested reconsideration. OWCP received this request on January 8, 2013. Appellant indicated that he was enclosing medical documentation not yet considered by OWCP "which clearly points to the fact that the touching from a coworker worsened the claimant's medical condition." OWCP acknowledged appellant's correspondence on January 22, 2013.

³ Docket No. 12-0439 (issued August 20, 2012).

⁴ The facts of this case as set forth in the Board prior decision are hereby incorporated by reference.

In a February 21, 2013 decision, OWCP denied appellant's request on the grounds that it neither raised a substantial legal question nor included new and relevant evidence. "While the December 29, 2012 letter makes reference to enclosed medical documentation that had not yet been considered, the request did not include any medical evidence."

Appellant's representative argues on appeal that he submitted to OWCP a four-page medical report with appellant's case number in the top right-hand corner of each page, a copy of which he provided the Board, not to review, but simply to apprise the Board of what he submitted to OWCP. He requested that the Board overturn the February 21, 2013 decision and remand the case for further development, as OWCP did not consider the medical evidence originally submitted.

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁵ 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.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ 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.⁸

ANALYSIS

Appellant has one year following OWCP's October 31, 2012 merit decision, or until October 31, 2013, to request reconsideration. His reconsideration request, received by OWCP on January 8, 2013, is therefore timely.

The specific issue presented on this appeal is whether appellant's reconsideration request met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for a review of the merits of the claim. The request did not show that OWCP erroneously applied or

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606.

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608.

interpreted a specific point of law. It did not advance a relevant legal argument not previously considered by OWCP. And it did not contain evidence that constituted relevant and pertinent new evidence not previously considered by OWCP. Therefore, appellant's request met none of these requirements. It appears from the record that appellant's request contained no evidence at all, notwithstanding the representation made.

Accordingly, the Board finds, pursuant to 20 C.F.R. § 10.608, that OWCP properly denied appellant's request for a merit review of his case. The Board will therefore affirm OWCP's February 21, 2013 decision.

The Board appreciates the argument appellant's representative makes on appeal, but it must base its decision on the record. The record indicates that OWCP has not yet received the medical documentation in question.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2013
Washington, DC

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

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

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