

FACTUAL HISTORY

On October 5, 2013 appellant, then a 51-year-old city clerk/carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained stress, anxiety and depression due to his work. He first became aware of his claimed condition on October 2, 2013 and first realized that it was caused or aggravated by his work on October 3, 2013. Regarding the relationship of the claimed condition to his work, appellant stated, "Working in a hostile environment, with threats from station manager, assisted by other employees." He stopped work on October 2, 2013 and returned to his regular work on October 4, 2013.

In a note dated October 3, 2013, Dr. Tammie Tucker-Moore, an attending Board-certified internist, indicated that appellant needed to take off work on October 3, 2013 and could return to work on October 4, 2013.

In an October 17, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It stated, "Factually, the injury, accident or employment factor alleged must have actually occurred."² On that date, OWCP also requested that the employing establishment provide information about appellant's work duties and possible sources of stress.

Appellant submitted a document which generally described the duties and responsibilities of the position of city clerk/carrier. He also resubmitted the October 3, 2013 note of Dr. Tucker-Moore.

In a November 12, 2013 e-mail, an employing establishment official, contended that appellant's allegations were not factually supported and stated that he became angry when he was asked about "the portion that he was given away for two hours." She asserted that he was not made to work beyond his work restrictions and that no extra demands were placed on him. The employing establishment official stated that appellant received all appropriate pay that he was due, including an occasion when he received a 70 percent pay advance. She noted that he often became angry when someone expressed an opinion that differed from his own and had yelled at coworkers on several occasions.

In a November 20, 2013 decision, OWCP denied appellant's emotional condition claim. It found that he did not establish any compensable work factors. Regarding appellant's failure to establish the factual component of his claim, OWCP stated:

"On the [Form] CA-2, ... you have only provided vague and general information (hostile environment) regarding your claim without supporting evidence or specific examples. You have not provided witness statements and/or documented evidence or proof to support that what you claim occurred in the manner that you allege. You have not provided the specific details of what you are claiming, *i.e.* time, date, place, what occurred, who was involved, what was said, your reaction, etc. Without such evidence you have failed to provide a factual basis to support your claim."

² Appellant was provided 30 days from the date of the letter to provide such additional evidence.

In a form signed on January 10, 2014 and received on January 14, 2014, appellant requested reconsideration of his claim. He submitted medical records, including periodic treatment notes dated April to October 2013. In an October 3, 2013 report, Dr. Karen Uehling, an attending Board-certified psychiatrist, noted that appellant reported that he believed his supervisor “targeted” him and that his light-duty restrictions at work were violated.

In a January 27, 2014 decision, OWCP denied appellant’s request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It noted that the underlying issue of this case was factual in nature, *i.e.*, his failure to adequately identify and establish work factors. OWCP found that the medical evidence submitted on reconsideration was irrelevant to this matter.

LEGAL PRECEDENT -- ISSUE 1

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.³ 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.⁴

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant’s performance of his regular duties, these could constitute employment factors.⁵ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.⁶

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁶ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁸

In cases involving emotional conditions, the Board has held that, 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.⁹ If a claimant does implicate a factor of employment, OWCP 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, it must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS -- ISSUE 1

On October 5, 2013 appellant filed an occupational disease claim alleging that he sustained stress, anxiety and depression disorder due to his work. Regarding the relationship of the claimed condition to his work, he stated, "Working in a hostile environment, with threats from station manager, assisted by other employees." OWCP denied appellant's emotional condition claim on factual grounds, *i.e.*, on the grounds that he did not adequately identify and establish the work factors which he believed caused his claimed emotional condition.

The Board finds that OWCP properly denied appellant's claim because he did not meet his burden of proof to adequately describe the work factors which he believed caused him to sustain an emotional condition. As noted above, appellant's burden includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹¹ He generally alleged that he worked in a "hostile environment" and that he was threatened by a station manager with assistance from coworkers. However, appellant did not provide any further detail about any specific incidents, such as the dates they occurred, the individuals that were involved or the statements that were made during the incidents. He did not provide any factual evidence

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁰ *Id.*

¹¹ *See supra* note 8.

in support of his generalized claims. Appellant was provided an opportunity to provide additional detail regarding his claimed work factors, but he failed to do so within the allotted time period.¹²

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹³

On appeal, appellant indicated that he wished to have an opportunity to delineate the work factors which he believed caused his emotion condition. He may pursue this before OWCP, but based on the evidence presently of record, the Board finds insufficient factual evidence in support of his claim.¹⁴

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(a) of FECA,¹⁵ OWCP's regulations provide that the evidence or argument submitted by 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.¹⁶ 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.¹⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁸ The Board has held that the submission of evidence

¹² Appellant submitted a document which generally described the duties and responsibilities of the position of city clerk/carrier, but he did not indicate that he sustained stress due to any particular work duties. An employing establishment official submitted a statement indicating that he complained about various circumstances at work, but this statement would not serve as a substitute for his own detailed statement about which incidents and conditions at work he believed caused his claimed emotional condition.

¹³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁴ As an appellate body, the Board may not review evidence for the first time on appeal. *See* 20 C.F.R. § 501.(c)(1).

¹⁵ Under section 8128 of FECA, "[t]he 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).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ *Id.* at § 10.607(a).

¹⁸ *Id.* at § 10.608(b).

or argument which repeats or duplicates evidence or argument already in the case record¹⁹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁰ While a reopening of a case may be predicated solely on a legal premise not previously considered such reopening is not required where the legal contention does not have a reasonable color of validity.²¹

ANALYSIS -- ISSUE 2

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of his claim. In connection with his January 14, 2014 application for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument. In support of his reconsideration request, appellant submitted various medical records, including periodic treatment notes dated between April and October 2013. However, the underlying issue in this case is whether he established those work factors which he believed caused him to sustain an emotional condition. Appellant's claim was denied on a factual basis, *i.e.*, his failure to support any implicated work factors with sufficient factual evidence as to time, place or manner. Therefore, the medical evidence submitted in support of his reconsideration request is not be relevant to the main issue of this case. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any evidence in this case which was both new and relevant.²²

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

²⁰ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²¹ *John F. Critz*, 44 ECAB 788, 794 (1993).

²² Appellant submitted an October 3, 2013 report in which an attending Board-certified psychiatrist indicated that he reported that he believed his supervisor "targeted" him and that his light-duty restrictions at work were violated. However, this reference to work matters is vague in nature and is not relevant with respect to the basis of OWCP's previous denial of the claim.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2014 and November 20, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2014
Washington, DC

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

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

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