

FACTUAL HISTORY

On April 21, 2011 appellant, then a 63-year-old health systems specialist, filed an occupational claim (Form CA-2) alleging stress and aggravation from a preexisting diabetes condition as a result of adverse working conditions. In a narrative statement, he alleged that commencing in August 2008 he had been stripped of all meaningful work assignments by his supervisors and given only limited and menial tasks to perform that were not commensurate with his position. Appellant also alleged that he had been prevented from having any meaningful interaction with coworkers, making him feel as if he were in solitary confinement. He also alleged that he had been placed in a noisy work area and the employing establishment had refused his requests for accommodation. Appellant stopped work as of November 23, 2010.

The record contains correspondence from appellant's representative to his supervisors with respect to appellant's work and requests for accommodation. On November 16, 2011 the employing establishment's associate chief of staff responded to an OWCP request for information. He controverted appellant's allegations and submitted witness statements regarding various incidents involving appellant, who had a history of conflict with his coworkers and supervisors. The employing establishment made a good faith effort to engage appellant in meaningful duties but was not successful due to appellant's behavior and personality traits.

By decision dated December 20, 2011, OWCP denied appellant's claim for compensation. It found that he had not established any compensable work factors.

By letter dated December 19, 2012, appellant, through counsel, requested reconsideration of the claim. He argued that, under Board case law, the evidence of record established compensable work factors. Appellant cited *Lillian Cutler*³ and argued that a requirement imposed by the employment is a compensable work factor, and the employing establishment had imposed two requirements on appellant's work: (1) that he remain on the premises without being assigned any work for most of the time; and (2) that he not interact or socialize with coworkers.

In a decision dated April 8, 2013, OWCP denied merit review of the claim. It found that appellant did not meet the requirements for merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁵

³ 28 ECAB 125 (1976).

⁴ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁵ 20 C.F.R. § 10.606(b)(3).

20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

In the present case, appellant's claim was denied on the grounds that the record did not establish any compensable work factors with respect to the claim for compensation. He filed a December 19, 2012 application for reconsideration. The April 8, 2013 OWCP decision addresses the first requirement for establishing a merit review, whether appellant has shown that OWCP erroneously applied or interpreted a specific point of law. It stated that the assignment of work duties and the monitoring of activities at work were administrative tasks, and absent error or abuse there was no coverage under FECA. As to the second requirement, the decision simply states that appellant did not advance a relevant legal argument not previously considered, without further explanation.

The Board finds that appellant did advance a new and relevant legal argument in this case. Appellant argued that, under *Lillian Cutler*, a requirement imposed by the employing establishment is a compensable work factor. In this case, he contends that the employing establishment required that he perform little work and that he not interact with coworkers. Appellant argued that therefore a reaction to these requirements would be covered factors under FECA.

This represents a new argument that is relevant to the issue of compensable work factors presented in his claim.⁷ Appellant advanced a relevant legal argument not previously considered by OWCP. He has met the standard set forth at 20 C.F.R. § 10.606(b)(3)(ii) and he is entitled to a merit review of the claim. The case will be remanded to OWCP for a proper merit decision on the issues presented.

CONCLUSION

The Board finds that appellant is entitled to a merit review of the claim.

⁶ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence which may be necessary to discharge his or her burden of proof. The requirements pertaining to the submission of evidence in support of reconsideration only specify that the evidence or argument be relevant and pertinent and not previously considered by OWCP. *Donald T. Pippin*, 54 ECAB 631 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: June 24, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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