

FACTUAL HISTORY

On September 10, 2013 appellant, then a 51-year-old clerk, filed an occupational disease claim alleging that he developed severe anxiety, chest pains, and trouble sleeping due to the harassing actions of his supervisor.

Appellant submitted a note from Dr. Robert A. Rizzo, an internist, diagnosing stress. Dr. Rizzo stated that appellant was totally disabled from August 1 through September 9, 2013. Dr. Gamal E. Gad, a Board-certified psychiatrist, found that appellant was totally disabled from June 12 to September 8, 2013 due to work-related anxiety and depression.

Appellant had previously received a letter of warning on June 20, 2013 for failure to follow instructions and creating a hostile work environment.

On September 12, 2013 OWCP requested that appellant provide additional factual evidence in support of his emotional condition claim. Appellant responded to OWCP's specific questions and submitted a narrative statement describing the interactions with his supervisor on specific dates from May 6 through June 11, 2013 and his disagreement with these events. He alleged that on May 6, 2013 his supervisor criticized the accuracy on his machine, but did not confront his machine partner. On May 7, 2013 appellant received documentation that his machine accuracy was appropriate and that the criticism was due to another employee's inaccuracy. He alleged that on May 8, 2013 his supervisor "yelled and screamed" at him regarding his technique of processing the mail. Appellant asserted that he had followed the protocol provided and that his machine was defective. He alleges he was conversing with a friend at work on May 15, 2013 and his supervisor directed him to return to work. Appellant alleged that other employees were allowed to talk without reprimand. On May 29, 2013 his supervisor directed him to take his machine out of program. Appellant declined to do so and alleged that this instruction was a deliberate attempt to lower his speed rating. He stated that his supervisor provided a coworker with coffee on May 31, 2013, but criticized appellant for reading a newspaper while working. Appellant stated that his supervisor scheduled a meeting through a note rather than verbally which appellant felt was unprofessional. On June 8, 2013 his supervisor directed him to run more mail. Appellant alleged that a coworker should have been directed to do that and he refused to follow his supervisor's order. The second-level supervisor came to appellant's station and appellant explained the situation. Appellant's supervisor allegedly continued to yell and scream. Appellant went to the second-level supervisor who instructed him to go home and informed appellant's immediate supervisor that appellant should be placed on a different machine. The second-level supervisor presented his version of events and the second-level supervisor then directed appellant to return to his machine. Appellant's immediate supervisor approached him on June 11, 2013 and informed him that he was being moved. Appellant filed a grievance through the union. He also submitted additional medical evidence from Drs. Gad and Rizzo.

By decision dated March 7, 2014, OWCP denied appellant's emotional condition claim finding that he had not established a compensable factor of employment. It found that he attributed his emotional condition to actions of his supervisor which related to administrative functions. OWCP found that appellant had not submitted the necessary supportive evidence to establish that his supervisor erred or acted abusively in these administrative functions including

discipline or directions about how to perform his work. It further found that he had not provided the necessary factual evidence to substantiate his allegations of discrimination or harassment through the listed actions of his supervisor.

Appellant requested a review of the written record from OWCP's Branch of Hearings and Review through a form dated April 7, 2014, postmarked April 17, 2014, and received by OWCP on April 21, 2014. In a decision dated May 21, 2014, OWCP's Branch of Hearings and Review denied appellant's request as untimely. It further found that the issue in his claim could be addressed through the reconsideration process.

Appellant requested reconsideration through a form dated December 28, 2014 and received by OWCP on January 5, 2015. He submitted a report from Dr. Gad dated September 17, 2013 stating that appellant was under his care for work-related anxiety and depression. Appellant also submitted reports from Dr. Rizzo dated August 1, 2013 and April 7, 2014 diagnosing panic disorder with agoraphobia.

By decision dated January 9, 2015, OWCP declined to reopen appellant's claim for consideration of the merits finding that he had not submitted relevant new evidence.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.³ Section 10.606(b)(3) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴ Section 10.608(b) of OWCP's regulations provides that when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁵

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

³ 5 U.S.C. §§ 8101-8193, 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.608.

⁶ *M.E.* 58 ECAB 694 (2007).

ANALYSIS

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on January 9, 2015.

Appellant timely requested reconsideration of the March 7, 2013 decision denying his claim for an emotional condition. However, he neither argued that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. In support of his reconsideration request, appellant submitted additional medical evidence including a report from Dr. Gad dated September 17, 2013 and reports from Dr. Rizzo dated August 1, 2013 and April 7, 2014. Where a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record.⁷ These medical reports are irrelevant to the basis for which OWCP denied appellant's emotional condition claim. OWCP denied appellant's claim finding that he had failed to attribute his emotional condition to compensable factors of employment as he did not submit the necessary factual evidence to establish harassment, discrimination, or error and abuse in administrative functions. The additional medical evidence does not address the lack of supportive factual evidence and is insufficient to require OWCP to reopen appellant's claim for consideration of the merits.

As appellant failed to meet any of the criteria, the Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

⁷ A.K., 58 ECAB 119 (2006).

ORDER

IT IS HEREBY ORDERED THAT January 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board