

FACTUAL HISTORY

On a prior appeal,² the Board found a compensable factor of employment. Appellant, a 54-year-old financial technician/budget analyst, filed an occupational disease claim alleging that his Graves' disease, anxiety and major depression disorder, panic attacks, and post-traumatic stress disorder were a result of his federal employment. He attributed these conditions primarily to his interaction with a senior budget analyst, but he failed to submit independent evidence establishing that this senior budget analyst committed a specific administrative error or abuse in dealing with him. Appellant also implicated his workload. The Board found no evidence of a hiring freeze, personnel shortage, added workloads, or unexpected deadlines and meetings.

A supervisor confirmed, however, that appellant did perform overtime work in evenings and occasionally on weekends. The Board found that this established a compensable factor of employment under *Lillian Cutler*, 28 ECAB 125 (1976). The Board remanded the case to OWCP for a review of the medical opinion evidence on the issue of causal relationship.

On remand, in a decision dated October 30, 2013, OWCP reviewed the medical evidence and could find no opinion from any physician establishing that the employment factor caused or affected the conditions claimed.³

By appeal form dated November 7, 2013, appellant requested a review of the written record by an OWCP hearing representative. He submitted an October 30, 2013 note from a licensed clinical social worker. Appellant described stress and anxiety related to his interaction with coworkers, lack of focus, and concentration requiring him to work during the evening and weekends, his professionalism and ability to complete job tasks being challenged and questioned on an ongoing basis, which created tension for at least one year prior to presenting to the psychiatric emergency clinic. The report concluded: "Based upon [appellant's] presentation during individual sessions his exacerbations of symptoms are more likely than not contributed by his work environment."

On April 18, 2014 an OWCP hearing representative affirmed the denial of appellant's claim. He found no report from a qualified physician containing a well-reasoned opinion explaining how any of his emotional conditions were caused or contributed to by the accepted performance of overtime work in evenings and occasionally on weekends. Accordingly, the hearing representative found that appellant failed to establish the essential element of causal relationship.

² Docket No. 13-399 (issued September 26, 2013).

³ OWCP prepared a statement of accepted facts listing the following events as accepted factors of employment: hiring freeze, personnel shortages, added workloads, having to work overtime and weekends to keep up with his tasks and reports, unexpected deadlines and meetings, and senior budget analyst demands. The Board's prior decision, however, made clear that the evidence established only one compensable factor of employment: appellant performed overtime work in evenings and occasionally on weekends. The Board found no evidence of a hiring freeze, personnel shortage, added workloads, or unexpected deadlines and meetings. The Board also found no independent evidence establishing that the senior budget analyst committed a specific administrative error or abuse in dealing with appellant. The accepted events in OWCP's statement of accepted facts are thus inconsistent with the findings of the Board.

By letter dated May 1, 2014, received by OWCP on May 6, 2014, appellant requested reconsideration. He argued that two physicians of record were qualified physicians whose opinions required reconsideration. Appellant again submitted the October 30, 2013 note from the licensed clinical social worker. Receipt of this copy, however, was acknowledged by the electronic signature of another licensed clinical social worker and Dr. Alexandra L. Spessot, a Board-certified psychiatrist.

In a decision dated July 16, 2014, OWCP denied appellant's reconsideration request. It found that the October 30, 2013 report was repetitious of evidence previously considered. "Specifically, this report is an exact duplicate of a report that was used to make a previous determination in your case."

Appellant believes that he has provided sufficient evidence signed by a qualified physician that his conditions are work related.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.⁵

Causal relationship is a medical issue,⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty,⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

The Board has held that certain health care providers, such as a physician's assistant, nurse practitioner, physical therapist, or social worker, are not defined as "physicians" under

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *William E. Enright*, 31 ECAB 426, 430 (1980).

FECA. Consequently, their reports are of no probative medical value for purposes of establishing a claim under FECA.¹⁰

ANALYSIS -- ISSUE 1

As the Board found on the prior appeal, the evidence established only one compensable factor of employment, namely, that appellant performed overtime work in the evening and occasionally on weekends. The question presented on this appeal is whether this factor of employment caused or aggravated any of his diagnosed conditions.

The Board has reviewed the medical evidence and can find no discussion or explanation from a qualified physician of how performing overtime work in the evening and occasionally on weekends caused or aggravated any of appellant's diagnosed conditions. Progress notes typically relate the history appellant provided, which included a number of employment factors that are not established to be compensable. There was no well-reasoned professional opinion on whether the accepted condition caused or aggravated a diagnosed condition.

The October 30, 2013 note from a licensed clinical social worker concluded that the exacerbations of appellant's symptoms were more likely than not contributed by his work environment, based on his presentation during individual sessions. However, it was not signed by a qualified physician, as a licensed clinical social worker is not a physician as defined under FECA,¹¹ this report does not constitute competent evidence.¹²

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.¹³ 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.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.¹⁵ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at

¹⁰ *E.g.*, *S.T.*, Docket No. 14-895 (issued November 4, 2014).

¹¹ 5 U.S.C. § 8101(2); *see also T.C.*, Docket No. 14-1375 (issued November 5, 2014).

¹² *K.W.*, Docket No. 07-1669 (issued December 13, 2007).

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606.

¹⁵ *Id.* at § 10.607(a).

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.¹⁶

Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.¹⁷ Evidence that does not address the particular issue involved also constitutes no basis for reopening a case.¹⁸

ANALYSIS -- ISSUE 2

OWCP received appellant's reconsideration request within one year of the hearing representative's April 18, 2014 merit decision. The request is therefore timely. The question to be determined is whether that request met at least one of the standards for obtaining a merit review.

Appellant's request did not show that OWCP erroneously applied or interpreted a specific point of law. The request did not advance a relevant legal argument not previously considered by OWCP. Appellant argued that two physicians of record were qualified physicians, but that alone is insufficient to reopen his case. For the argument to be relevant, he must show that these physicians had offered a well-reasoned opinion on whether performing overtime work in evenings and occasionally on weekends caused or aggravated a diagnosed condition. The Board can find no such opinion.

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP. Appellant did submit a copy of the October 30, 2013 note from the licensed clinical social worker. Although the content of the note was identical to the note previously considered, it now bore the electronic signature of a qualified physician, Dr. Spessot, a Board-certified psychiatrist. With this signature, Dr. Spessot acknowledged receipt of the note and nothing more. She did not endorse the opinion offered therein, or otherwise indicate her concurrences.

Accordingly, as appellant's reconsideration request did not meet any of the requirements for reopening the merits of his case, the Board finds that OWCP properly denied a merit review. The Board will affirm OWCP's July 16, 2014 decision.

CONCLUSION

The Board finds that appellant has not met his burden to establish that performing overtime work in evenings and occasionally on weekends caused or aggravated a diagnosed condition. The Board also finds that OWCP properly denied his reconsideration request.

¹⁶ *Id.* at § 10.608.

¹⁷ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹⁸ *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

ORDER

IT IS HEREBY ORDERED THAT the July 16 and April 18, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2015
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