

**United States Department of Labor
Employees' Compensation Appeals Board**

G.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cabo Rojo, PR, Employer**

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**Docket No. 15-0450
Issued: June 19, 2015**

Appearances:
Susan Cordero-Ladner, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 24, 2014 appellant, through counsel, filed a timely appeal of a July 8, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Since more than 180 days has elapsed between the last merit decision on February 11, 2014 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, under 5 U.S.C. § 8128(a).

ISSUE

The issue is whether OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 19, 2013 appellant, then a 39-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging injuries as a result of his federal employment. On the claim

¹ 5 U.S.C. § 8101 *et seq.*

form, he stated that, as part of his job routine, he must stand and walk constantly. Appellant indicated that he must twist, bend, or stretch frequently because of the position of the racks where the letters and packages are located. He stated there was repetitive fingering, handling, lifting, pulling, pushing, and reaching in his job. Appellant described his injuries as chronic cervical, dorsal and lumbosacral pain, L5-S1 herniated disc, L5 radiculopathy, and bilateral carpal tunnel syndrome, pain and numbness in the legs. In addition, he noted “severe major depression” and stated that there was constant stress from work and his body pain.

In a narrative statement, appellant again discussed the physical requirements of his position. He stated that he had to stand and walk, and that his job involved twisting, bending, and crouching because of the position of the racks. According to appellant, there were packages weighing up to 40 pounds and there was frequent fingering, handling, lifting, pulling, pushing, and reaching. The injuries sustained included cervical, dorsal, and lumbosacral pain, numbness and pain in the legs, arms, and hands, herniated L5-S1 disc, left L5 radiculopathy, bilateral carpal tunnel syndrome, and patellofemoral syndrome in the right leg. As to an emotional condition, appellant stated that this was caused by his physical condition and pain, and stress due to a heavy workload.

OWCP requested that appellant submit additional evidence to support his claim, by letter dated September 10, 2013. Appellant submitted medical evidence with respect to both physical and emotional conditions. In a note dated March 8, 2013, two coworkers of appellant requested that the employing establishment investigate a March 5, 2013 incident involving appellant and a supervisor. The record contains an undated note from appellant alleging that on March 5, 2013 a supervisor yelled and pointed a finger at his chest. In a March 15, 2013 letter, the employing establishment controverted appellant’s claim for a “mental illness.” It contended that the incident did not occur as alleged by appellant. The record contains a March 5, 2013 statement from a supervisor denying that she pointed at appellant, or harassed him. In addition, appellant submitted a statement alleging that he had been denied overtime in February 2013, and he felt his supervisors did not treat him with respect.

As to medical evidence, appellant submitted a report dated May 13, 2013 from Dr. Manuel Martinez, a Board-certified psychiatrist, who indicated that appellant had chronic neck pain and carpal tunnel syndrome and was disabled for the letter carrier position. In a report dated May 20, 2013, Dr. Japhet Montes, a psychiatrist, opined that appellant was unable to work due to severe major depression.

By decision dated February 11, 2014, OWCP denied appellant’s claim, finding that, while appellant had filed a claim for an emotional condition from “both the physical requirements of [his] job and stress of [his] job,” no compensable work factors were established. It found the March 5, 2013 incident was not a compensable work factor,² nor were denied requests for leave or overtime in February 2013.

In a letter dated June 12, 2014, appellant, through counsel, requested reconsideration of the February 11, 2014 decision. Counsel noted that appellant had alleged physical injuries,

² Appellant filed a traumatic injury claim for an emotional condition from alleged incidents on March 5, 2013. That claim is not before the Board on this appeal.

including carpal tunnel syndrome, disc protrusion, and radiculopathy. She stated that his claim was based on the performance of his job duties, which required repetitive activity. Counsel argued that diagnosed physical and emotional conditions were causally related to appellant's job duties. In addition, she argued that his injuries "are causally related to the work he performs and are within the scope of compensable work factors." Appellant also resubmitted medical evidence. New medical evidence included hospital laboratory reports dated April 3, 2014.

By decision dated July 8, 2014, OWCP declined to review the merits of the claim. It stated that evidence was duplicative and counsel's statements were not germane to the issue because she did not outline the specific stress claimed to have caused appellant's emotional condition.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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."⁴ 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.⁵

ANALYSIS

In the present case, appellant filed a Form CA-2 on August 19, 2013 in which he clearly claimed both physical injuries and an emotional condition. He alleged that he sustained chronic cervical, dorsal, and lumbosacral pain, L5-S1 herniated disc, L5 radiculopathy, and bilateral carpal tunnel syndrome. As to an emotional condition, appellant alleged both a consequential injury from the physical injuries, as well as to job stress.

The February 11, 2014 OWCP decision found that appellant had alleged an emotional condition due to the "physical requirements" and stress of the job. However, OWCP found that appellant had not established compensable work factors. The decision discussed a March 5, 2013 incident with a supervisor and requests for overtime and leave, without discussing the claim for physical injuries resulting from performance of job duties.

On reconsideration, counsel argues that appellant did allege the performance of his job duties and compensable work factors as to his claim for physical and emotional conditions. The Board finds that appellant has advanced a new and relevant legal argument with respect to the

³ 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.")

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

February 11, 2014 decision. In that decision, OWCP failed to acknowledge that appellant had discussed the performance of specific assigned duties and the repetitive activity involved, including standing, walking, twisting, bending, reaching, and lifting. It is well established that the performance of regularly assigned duties are compensable work factors.⁶ When a claimant alleges both physical injuries from assigned duties and an emotional condition, OWCP must properly adjudicate all of the issues presented.⁷ Appellant alleged that the performance of repetitive activity from his assigned duties resulted in diagnosed injuries. OWCP did not address the claim for injuries resulting from the identified physical duties of a letter carrier.

The Board accordingly finds that appellant's application for reconsideration met the requirements of 20 C.F.R. § 10.606(b)(3)(ii). Appellant advanced a new and relevant legal argument as to the compensability of the work factors alleged. He was entitled to a proper merit decision on the claim. On return of the case record OWCP should issue a merit decision with respect to the claim for physical and emotional conditions.

CONCLUSION

The Board finds that appellant was entitled to a merit review of his claim for compensation.

⁶ See *Trudy A. Scott*, 52 ECAB 309 (2001); see also *D.F.*, Docket No. 13-2036 (issued February 26, 2014).

⁷ See, e.g., *J.C.*, Docket No. 13-202 (issued May 6, 2013) (the hearing representative found an emotional condition was not established, but remanded the case for further development of the medical evidence because the claimant had identified the work duties to which he attributed his physical injuries).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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