United States Department of Labor
Employees' Compensation Appeals Board

N.T., Appellant	)	
	)	**Docket No. 14-0694 &**
and	)	**15-0319**
	)	**Issued: February 19, 2016**
GENERAL SERVICES ADMINISTRATION,	)	
PUBLIC BUILDING SERVICES,	)	
Kansas City, MO, Employer	)	
	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 7, 2014 appellant, through counsel, filed a timely appeal from an August 26, 2013 merit decision and a January 8, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) in Claim No. xxxxxx813. On November 25, 2014 appellant, through counsel, also filed a timely appeal from an October 7, 2014 merit decision of OWCP in Claim No. xxxxxx261. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these appeals.

ISSUES

The issues are: (1) whether OWCP properly denied expansion of appellant's claim to include an anxiety disorder and aggravation of Asperger's disorder due to the accepted condition; (2) whether OWCP met its burden of proof to terminate appellant's compensation and medical benefits effective February 12, 2012 as the accepted, single episode of aggravation of hypertension/hypertensive cardiovascular disease had resolved; (3) whether appellant established

[1] 5 U.S.C. § 8101 *et seq.*

continuing disability or residuals of his accepted conditions after February 12, 2012; (4) whether OWCP properly denied a merit review under 5 U.S.C. § 8128(a); and (5) whether OWCP properly determined that appellant's claim for an occupational disease was barred by the applicable time limitation provisions of FECA.

On appeal, appellant's counsel argues that because OWCP failed to expand appellant's claim, the full extent of the disability due to this employment condition has not been recognized or acknowledged. He contends that the evidence established that appellant continued to be disabled. Counsel further argues that appellant's treating psychologist first associated the aggravation of appellant's Asperger's disorder with his job duties in a report dated June 26, 2010. Therefore, he argues that appellant's November 25, 2011 claim was timely filed. Counsel also asks that these cases be consolidated for decision.[2]

FACTUAL HISTORY

On July 6, 2005 appellant, then a 46-year-old property manager,[3] filed a traumatic injury claim[4] alleging that on June 15, 2005 he became ill when he was required to attend a previously scheduled performance review meeting. He stated that he was unprepared for the performance review meeting and asked that the meeting be postponed. Contrary to his wishes, the meeting went forward and appellant developed a headache. After the meeting, he remained at work and moved boxes and files, but claimed that his headache worsened and he left work that day. Appellant has not returned to duty.

OWCP sent appellant, on September 15, 2005, a development letter advising him of the evidence needed to establish his claim. He was advised that the case would be held open for 30 days for him to submit that additional evidence.

The record reflects that five days before he stopped work, on June 10, 2005, appellant was notified of the upcoming property manager's performance review meeting scheduled for

[2] The Board has already issued its decision in Docket No. 14-390 on December 18, 2014. *See* Docket No. 14-390 (issued December 18, 2014) in Claim No. xxxxxx193

[3] Appellant was previously a GS-11 property manager. In July 2004 he was transferred to another location within the employing establishment, the Rodino building, where there were four coworkers. In December 2004 appellant complained that the staffing level had been reduced from four to two managers. He claimed that, as he was in essence doing the work of a GS-12, he should be promoted. Since he filed this claim, appellant has filed multiple claims with the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB) regarding this matter. Although the decisions of the EEOC and the MSPB were not in the record, it appears that as part of an August 1, 2007 global settlement agreement between appellant and the employing establishment, his position was reclassified from a GS-11 to a GS-12 retroactive to May 2, 2005. Appellant has filed many complaints against his employing establishment alleging discrimination and failure to accommodate his disability. The record reflects appeals through the EEOC, MSPB, Federal Labor Relations Authority (FLRA), state unemployment agencies, and the employing establishment grievance procedure. The global settlement agreement allegedly included an agreement whereby appellant would withdraw all of his complaints with EEOC and MSPB and agreed to file no further complaints, but the complete terms of that settlement are absent from the record.

[4] Appellant had filed a prior claim for a July 9, 1996 incident for which OWCP had accepted an aggravation of hypertension on September 15, 1998 (OWCP Claim No. xxxxxx132).

Wednesday, June 16, 2005 at 10:00 a.m.[5] He was advised that the review would be of his performance for the past six months. Appellant was advised to provide the following information for the review: cleaning inspections for the last three months, records of any meetings held with janitorial contractor, the janitorial "Quality Control Program" for the last three months, a copy of the janitorial contract and any modifications, dates and times appellant met with the tenant agencies, and the "Monthly Building Report" for the last three months.

Following the meeting, a program review evaluations results memorandum addressed to appellant, dated June 20, 2005, stated the following deficiencies in his performance:

1. Failed to provide any cleaning inspections for the past three months.

2. Failed to provide any records of meetings held with OCNJ (janitorial contractor).

3. Failed to provide any documents authorizing payments for landscaping.

4. Failed to provide a copy of janitorial contract and any modifications

5. Failed to provide a copy of OCNJ's "Quality Control Program" for the last three (3) months.

6. Failed to keep records of meetings held with tenants agencies (times and dates).

7. Failed to provide cleaning inspections for the 2nd floor cafeteria.

The employing establishment controverted appellant's claim and disputed continuation of pay. By memorandum dated August 19, 2005, it suggested that appellant's headaches might have been due to the effects of his medication, Benzodiazepine, which lists headaches as a possible side effect, rather than his progress review meeting.

On October 26, 2005 OWCP received an undated medical summary report from Dr. Joseph A. Sarnelle, Board-certified in cardiovascular disease and appellant's treating physician, along with an attending physician's report (Form CA-20). In the attending physician's report, Dr. Sarnelle noted that he had first examined appellant on June 17, 2005 and diagnosed elevated blood pressure and an abnormal electrocardiogram (EKG) and checked a box marked "yes" as to whether the condition was caused or aggravated by an employment activity.

In the summary report, Dr. Sarnelle noted treating appellant on June 17 and 23, August 12, and September 20, 2005 and noted that he had prepared his report on the basis of an October 19, 2005 statement provided to him by appellant. He understood that appellant was required to complete a measure of work within a certain time frame that was set out in monthly inspection quotas. Dr. Sarnelle believed that the amount of work appellant had to perform required some lifting and climbing and required walking from location to location. He recognized that these activities required a level of physical effort. Dr. Sarnelle stated that appellant "was 'hurrying' about the building in order to 'make up time.' [Appellant] was clearly

[5] There was some confusion as to the day of the meeting. The notice scheduled it for Wednesday, the 16th but Wednesday was actually the 15th.

attempting to accomplish his work in a reduced amount of time. I believe, to a reasonable medical certainty that by increasing his pace [appellant] exerted himself to an unusually high level." Dr. Sarnelle explained that increased physical exertion almost invariably raises blood pressure. He reported that "having been [appellant's] physician for over nine years," he had the occasion to measure his blood pressure during periods of physical exertion. Dr. Sarnelle determined that physical exertion raises appellant's blood pressure and, to a reasonable medical certainty, he determined that appellant's injury on June 15, 2005 "was caused by physical exertion that occurred during his work shift."

Appellant's October 19, 2005 statement to Dr. Sarnelle reported that in February 2005 he had been given much more physically exerting work and was assigned "an enormous amount of additional duties, in addition to my already full workload." He provided Dr. Sarnelle various documents that outlined preparations for upcoming inspections, and that he was required to "inspect the entire building every 30 days." Appellant noted that the Rodino building had 70 rest rooms spread out over 18 floors that he had to inspect each month. He also noted that after he had returned from 2004 spinal surgery, he had been assigned to an area of less physical exertion than a typical building manager assignment would involve, but being transferred to the Rodino building dramatically increased the physical demands of his job. Appellant explained that the staffing of the building had been reduced by three managers and he was working with only one other individual. He claimed that all of the duties of the previous managers had been put on his shoulders. During the weeks preceding his injury, appellant was struggling to meet the conflicting deadlines of "my Safety and Environmental inspection duties and my duties under the cleaning contract." He claimed that on the 15th, he had been "hurrying to make up time" because he had "a number of irons in the fire," including an unscheduled meeting he had to attend.

OWCP accepted on December 7, 2005 an aggravation of hypertensive cardiovascular disease. The employing establishment was required to provide continuation of pay from June 20 through August 3, 2005.

On December 7, 2005 OWCP requested that appellant's treating physician provide a medical opinion on appellant's capacity to return to work and a treatment plan. It also advised that appellant would be placed into a nurse rehabilitation program. On March 29, 2006 the accepted condition was revised to a single episode of hypertension/hypertensive cardiovascular disease.

Dr. Sarnelle continued to submit attending physician reports finding appellant totally disabled commencing June 20, 2005 because of hypertension, reactive hypertension, labile hypertension, and spinal stenosis. Appellant filed claims for disability compensation (Forms CA-7) for the period August 11, 2005 through June 8, 2006.

On May 15, 2006 OWCP received an April 26, 2006 medical opinion report from Dr. Sean R. Evers, Ph.D., a clinical psychologist. Dr. Evers described at length the symptoms of an individual with Asperger's disorder and provided a history of appellant's past experience with the disorder. He noted that appellant had "revealed the details of his condition to his [employing establishment] at the time of his employ and has repeatedly referred to it and amplified that description during the term of his employ and as a result was granted accommodation."

Dr. Evers determined that appellant had, for the majority of his life, suffered from Asperger's disorder, and the condition was complicated by his significant anxiety disorder.

Dr. Evers noted that Asperger's disorder had not precluded appellant from maintaining a successful career in the Federal Government, but that two events had precipitated significant psychophysical difficulties. The first was in July 1996 while appellant worked at a location in New Jersey. He was able to return to work after that incident. The second was what appellant described as "escalating hostile work environment" on July 15, 2005, after which he was unable to return to work. Dr. Evers found that, when appellant's supervision changed and when the number of hours he could work were limited, his symptoms had been exacerbated. This increase in stress and anxiety "exacerbated his Asperger's symptoms." These changes heightened appellant's levels of stress and anxiety which manifested into both physical and psychological symptoms. Dr. Evers opined that there was a direct link between appellant's work situation and exacerbation of his psychological conditions. Physically appellant suffered from critical and dangerous spikes in his blood pressure and psychologically the combination of the underlying Asperger's disorder and his anxiety disorder resulted in a chronically heightened state of anxiety, hyperfocus, and a fear of future injury due to these symptoms.

The employing establishment controverted the claim on August 28, 2006. It noted that over the past year, appellant had filed several workers' compensation claims. The employing establishment contended that Dr. Sarnelle's report was based on a fictitious factual background provided by appellant. It claimed that appellant's claim of his workload was "dramatically inflated by him for self-serving reasons and that his account of what he alleges transpired on June 15, 2006 has no basis in reality." The employing establishment explained that appellant's total daily requirement for his inspections of the janitorial contract required him to visit two to three bathrooms and to walk one half of a floor and to then document his findings. It claimed that he was never assigned duplicate duties when another individual left the Roper Building. Appellant was assigned to replace that individual. His claim to have been "hurrying around" to be inspecting mechanical equipment is "baseless." Further appellant was not required to either lift or climb as he had been relieved of the duty to prepare the overtime utilities. His reports in that regard were considered consistently inaccurate which had to be redone by his associates.

The employing establishment further noted that the meeting on June 15, 2005 was not singling appellant out, as all managers were in the same position of having their performance reviewed at that time. Any stress associated with that meeting would have been because appellant had failed to perform his duties and that fact became apparent. It noted that a few days prior to his filing this claim on July 5, 2005, he had exhausted all of his annual and sick leave.

A note to the file indicates that on September 19, 2006 (after many telephone calls and letters from appellant) a senior claims examiner advised appellant that he would receive total disability compensation for the period August 11, 2005 through September 2, 2006. Later, by letter dated October 5, 2006 from a different claims examiner, OWCP advised appellant that he could only be paid from August 11 to September 11, 2005, without further medical development of the case.

Appellant continually communicated with OWCP and noted that he was very eager to return to work, but he claimed there were no positions available to meet his limitations. He

stated, as noted in several October 5, 2005 reports of telephone contact with OWCP, that he had another claim related to his psychological condition (OWCP Claim No. xxxxxx885) which should be combined into this case.[6] Further, appellant stated that OWCP Claim No. xxxxxx813 should not only include hypertension, but should be expanded to include aggravation of anxiety disorder and Asperger's disorder. By letter dated October 30, 2006, OWCP advised appellant that it could not determine whether any additional conditions were work related until the claim had been sent to a second opinion physician.

An October 20, 2006 note to the file by a senior claims examiner indicated that appellant had again called and expressed his disagreement with being paid for only one month. The note reflects that after that telephone call he conducted a thorough review of the case and noted that the case had not been adequately developed. The claims examiner stated that there had been no findings of fact regarding the acceptance of the claim. The claim had reportedly been accepted by a probationary claims examiner who was no longer with the office. The note acknowledged that, absent findings of fact, the record was unclear as to what warranted the acceptance of the condition. Further, the claims examiner noted that OWCP had only accepted a single episode of aggravation whereas the treating physician had referenced a permanent aggravation. He determined that appellant should be paid compensation for temporary total disability for lost time and that the claims examiner was directed to schedule a second opinion examination to determine the extent of any aggravation. The claims examiner stated that he was authorizing compensation for temporary total disability for the period August 11 through June 8, 2006.

OWCP on October 26, 2006 referred appellant and a statement of accepted facts (SOAF)[7] to Dr. John Verdon, a Board-certified psychiatrist, and to Dr. Christopher Pierson, an internist with a Board-certified subspecialty in cardiovascular disease, for second opinions.

In his November 30, 2006 report, Dr. Pierson reviewed the SOAF and appellant's medical record, including the test results from an EKG[8] and a cardiogram,[9] and noted a 10-year history of essential hypertension, a history of Asperger's disorder with features of obsessive-compulsive disorder and anxiety disorder.[10] He found no evidence of any work injury other than an exacerbation due to a "stressful or hostile work environment" by "[appellant's] report." Dr. Pierson reported that any cardiac condition was not due to work factors on June 15, 2005. He reported that emotional stress and his anxiety disorder had the effect of elevating appellant's blood pressure and that elevated blood pressure could be detrimental in the long run. Dr. Pierson reported that appellant was not disabled by any cardiac condition and could perform his regular

[6] In OWCP Claim No. xxxxxx885, appellant filed a December 27, 2005 traumatic injury claim based on alleged harassment and retaliation from his supervisor for having filed an EEO complaint.

[7] The SOAF noted that on June 15, 2005 appellant had been required to attend a progress meeting and to move boxes of files. As a result of this activity, OWCP had accepted a single episode of aggravation of hypertensive cardiovascular disease.

[8] The results were normal except for a borderline first degree atrioventricular block.

[9] The test results were normal.

[10] In the same report, Dr. Pierson noted that appellant had a history of some obesity and hyperlipidemia. He also noted an old surgical history of cervical fusion and foot surgery.

work, but suggested that his work environment be as stress free as possible. He noted that any limitation would be psychological in origin.

OWCP, by letter dated December 7, 2006, advised that appellant would be paid disability compensation for all the periods for which a claim for disability (Form CA-7) had been filed, which was to June 8, 2006. If appellant continued to allege disability after that period, he was advised to submit new claims (Forms CA-7) through his employing establishment.

In a January 9, 2007 report, Dr. Verdon diagnosed obsessive-compulsive disorder not due to or aggravated by his employment.[11] He strongly disputed the validity of appellant's diagnosis of Asperger's disorder and reported that appellant's psychological and psychiatric treatment had been ineffective. Dr. Verdon disagreed with the diagnoses and treatment rendered by Dr. Evers. He found appellant unable to work due to his out-of-control, severe, obsessive-compulsive disorder which had been untreated. Dr. Verdon determined that appellant's disability was not related to any employment factor.

On February 20, 2007 OWCP received a letter from the employing establishment dated February 16, 2006 advising that, although appellant had not returned to work since June 20, 2005, he had been observed serving as the union's technical representative at a MSPB hearing related to a case brought by a former coworker. The employing establishment argued that appellant's presence at the hearing belied his allegations of being totally disabled and that the award of temporary total disability for the period August 11, 2005 through June 8, 2006 was in error. It suggested that OWCP review appellant's claims.[12]

On August 13, 2007 OWCP requested clarification from Dr. Verdon regarding one aspect of the claim, but he did not respond to the request.

Appellant continued to receive disability compensation from June 8, 2006 through September 30, 2007 and was thereafter placed on the periodic compensation rolls.[13]

[11] Dr. Verdon noted that appellant had missed one appointment and arrived late for the rescheduled appointment. Appellant had called and reported that he was lost and could not find the doctor's office. The report of January 9, 2007 notes that the evaluation appointment was "truncated" to half an hour. Dr. Verdon noted that the short examination, coupled with the material in the record, allowed him to evaluate and offer an opinion concerning appellant's condition. He described appellant as completely disorganized, perplexed, confused, fearful, and easily flustered. OWCP began suspension of benefits proceedings on January 10, 2007 as appellant had failed to attend examinations on December 11, 2006 and January 9, 2007 but no further action was taken on the suspension.

[12] On January 19, 2007 the employing establishment had offered appellant his previous position, if he were medically able to do the job. An April 27, 2007 fitness-for-duty examination was scheduled. The Board has previously been involved in that matter. In Docket No. 12-1024 (issued December 20, 2012) the Board affirmed OWCP's December 12, 2011 denial of appellant's traumatic injury claim that his Asperger's disorder had been exacerbated due to being required to undergo a May 14, 2007 fitness-for-duty examination. In Docket No. 14-290 (issued December 18, 2014) the Board again affirmed the denial of appellant's claim that he aggravated his preexisting Asperger's disorder by being required to attend the May 14, 2007 examination.

[13] The employing establishment removed appellant from its rolls effective September 4, 2007 as he was unable for work.

On November 21, 2007 OWCP declared a conflict in medical evidence between Dr. Sarnelle and Dr. Pierson regarding the cardiovascular condition and disability. Appellant was referred to Dr. Luis Tejada, a Board-certified cardiologist, for an independent medical examination in Bethlehem, Pennsylvania. On that same date, OWCP further declared a conflict between Dr. Verdon and Dr. Sarnelle regarding the psychological component of his claim. Appellant was referred to Dr. William Head, Board-certified in psychiatry in Union, New Jersey.[14]

Appellant was extremely upset that he was referred for two additional medical examinations as he believed the medical evidence he had submitted was sufficient for a favorable outcome on his case. He also argued that having to go to both New Jersey and Pennsylvania was an extreme hardship for him and that he would need to be transported to those appointments by OWCP. Appellant disputed the need for additional psychiatric examination as his condition had only been accepted for hypertension. He also vehemently disagreed with Dr. Head as the referee physician as appellant claimed Dr. Head was biased. Appellant submitted numerous documents from state proceedings in which Dr. Head had served as a physician. He argued that he had spent years trying to perfect his claim and there was no need for additional medical examinations.

Appellant further requested that his case file be transferred to Pennsylvania as it was very inconvenient for him to go to New Jersey for appointments. He noted that, although he lives in Pennsylvania, he used his wife's work address in New Jersey for his address of record for OWCP. Appellant was advised that if he changed his official address of record to his Pennsylvania address they would transfer his case there.

Notes in the record dated December 12, 2007, and thereafter, reflect that Dr. Tejada's office manager called OWCP to decline to examine appellant. Although the office manager declined to answer whether appellant had been calling their office, the office manager stated that Dr. Tejada declined to be involved in "court procedures" and therefore would not see appellant.

On November 21, 2007 OWCP advised appellant that the request to expand his claim to include anxiety disorder and aggravation of preexisting Asperger's disorder would not be considered. It noted that he had filed two previous claims based on those same work factors[15] and they had already been decided and affirmed by the Branch of Hearings and Review.

By letter dated December 21, 2007, appellant's case record was formally transferred to Pennsylvania.

Dr. Head submitted his independent medical examination report on December 30, 2007. He reviewed the record and the SOAF and provided results on examination. Dr. Head found that

[14] OWCP received an October 31, 2007 report from Dr. Evers which found that appellant's psychological condition prevented appellant from being in the right state of mind when appellant had reached various settlement agreements with the employing establishment regarding his employment claims. The record is not clear as to the context of these employment matters and they are irrelevant to the current appeal.

[15] Appellant had filed an occupational disease claim (Form CA-2) in OWCP Claim No. xxxxxx900 and a traumatic injury claim (Form CA-1) in OWCP Claim No. xxxxxx885 alleging the same condition.

appellant had sustained no psychiatric condition related to the work incident of June 15, 2005 and any psychological component was due to preexisting conditions unrelated to the work incident of June 15, 2005. He determined that appellant could return to work full time without restrictions. Dr. Head noted that, if possible, he would suggest that appellant be assigned another supervisor to avoid any potential interpersonal conflict.

By report dated February 6, 2008, Dr. Evers noted reviewing Dr. Head's report and disagreed with his findings. He believed that Dr. Head had been narrowly focused on the psychiatric sequelae of the incident at work, which had occurred on June 15, 2005 more than two and a half years prior to his evaluation, that his focus was on psychosis only as the criteria for disability, that he did not consider prior evaluations, that he was relying on an inaccurate psychiatric history, and that OWCP had attempted to unduly influence Dr. Head's report by limiting his review only to the SOAF and not to appellant's own presentation of his history.

Dr. Evers submitted a more detailed report on March 25, 2008. He noted that appellant had been his patient since September 6, 2005. Appellant's initial presentation had been one of uncontrolled anxiety and obsessive-compulsive symptomology. Dr. Evers noted that appellant's cardiologist, Dr. Sarnelle, took him off work due to spiking blood pressure, which Dr. Sarnelle had determined was due to workplace stress. Later, Dr. Evers realized that appellant's behaviors were only part of a more pervasive and lifelong condition of Asperger's disorder. He provided an extensive description of appellant's condition and summarized that, on or about March 23, 2005, in his opinion, appellant experienced a traumatic set of circumstances where there was a flood at work which appellant had to manage resulting in an exacerbation of his psychological difficulties and a compensable psychological injury, an exacerbation of his anxiety disorder, and an aggravation of the obsessive-compulsive symptoms secondary to his Asperger's disorder.

Appellant remained on the periodic compensation rolls and submitted Forms EN1032 and medical reports from Dr. Sarnelle and Dr. Evers. Dr. Sarnelle completed regular-duty status reports (Forms OWCP-5a) finding appellant totally disabled.

In a January 26, 2010 report, Dr. Evers noted that appellant manifested adult symptoms of Asperger's disorder, complicated by significant obsessive-compulsive features and marked anxiety. He noted that appellant had been successfully employed until his position responsibilities allegedly increased. Dr. Evers concluded that appellant's underlying Asperger's disorder and associated obsessive-compulsive behaviors made him unable to do his job. This condition began prior to his being forced out of work, with the symptoms predating the September 4, 2007 termination following the fitness-for-duty examination. Dr. Evers found appellant currently disabled from performing his job duties.[16]

By letter dated March 22, 2010, the employing establishment requested confirmation from OWCP that appellant's current medical documentation verified that he remained disabled only due to the accepted, job-related condition and not for other nonwork-related factors.

[16] A further report from Dr. Evers, dated April 6, 2010, clarified that appellant had remained in an emotionally paralyzed state triggered by an admission by the employing establishment that a particular medical report did not exist. Dr. Evers was attempting to substantiate appellant's attempt to overturn an MSPB settlement agreement which he had reached with the employing establishment to resolve all of his employment appeals.

On April 20, 2010 OWCP requested an updated evaluation from Dr. Sarnelle as to appellant's cardiac condition. Dr. Sarnelle submitted a May 26, 2010 work capacity evaluation (Form CA-20) finding that appellant could return to work four hours a day assuming he was assigned to an alternative work location. He stated the restrictions were due to appellant's prescription of Diazepam due to his Asperger's disorder which caused drowsiness.

By letter dated February 28, 2011, appellant's new counsel formally requested that appellant's claim be expanded to include a psychological condition.

On March 25, 2011 appellant filed an occupational disease claim (OWCP Claim No. xxxxxx261) indicating that as a result of his federal duties he suffered from psychological decompensation, aggravation of Asperger's disorder, and aggravation of anxiety. In a separate statement, he alleged that accretion of duties caused a change in responsibility that exacerbated his underlying Asperger's disorder and caused a mental disorder. Alternatively, appellant claimed that the employing establishment abused the administrative processes. He noted that he worked assisting others and sharing responsibility but that on July 30, 2004 he was assigned to manage the overtime utilities program for the entire service center and that he could not manage the higher level duties with his illness. Appellant alleged that he first began to realize that he had a psychological illness in April 2005, that on January 9, 2007 he was first diagnosed with psychological decompensation, and that on March 25, 2008 he realized that his illness was "psychological decompensation." In addition to issues with his work responsibilities, he contended that he signed a settlement agreement on May 14, 2007 with regards to his termination from work and his disability, that once he signed it he began to get better, but that this relief faded when he realized that the employing establishment did not want to supply the necessary medical documents with regard to his disability, and that the settlement precluded him from disability retirement.

In response, the employing establishment noted that appellant was removed from federal employment on September 4, 2007.

On April 7, 2011 OWCP referred appellant to Dr. Jack Edward Pickering, a physician Board-certified in cardiology and internal medicine, for a second opinion on appellant's cardiac condition. It attached a SOAF which provided a factual summary of the relevant facts accepted by OWCP and directed that Dr. Pickering use the SOAF as the only factual framework for his opinion. OWCP asked Dr. Pickering to determine if the medical diagnosis was established, if a temporary or permanent aggravation had occurred, and to describe any preexisting disability.

In an April 29, 2011 report, Dr. Pickering noted a history of reactive hypertension secondary to Asperger's disorder. He noted that the hypertension had not resulted in heart disease or stroke and thus was not an employment limiting disorder. Any other disability determination would be deferred to any psychiatric assessment.

In a May 16, 2011 update, Dr. Pickering noted that appellant's diagnosis of hypertension was not medically connected to the factors of his federal employment, that in his opinion no aggravation of a preexisting cardiac condition arose from the June 15, 2005 employment incident, that his obesity could cause spikes in his blood pressure so he should work with a restriction of no lifting over 10 pounds, that there was no reason that appellant could not be

gainfully employed, and that any other diagnoses were not in the field of cardiology. Nonetheless, he found that the condition or disability reported on June 15, 2005 was not precipitated, accelerated, or proximately caused by factors of his employment.

In a June 7, 2011 report, Dr. Evers noted that appellant had been under his care since September 26, 2005 and had been in weekly psychotherapy since that date. He repeated his diagnosis of Asperger's disorder, which he referred to as an autistic spectrum disorder. Dr. Evers related that Asperger's disorder is evidenced by a failure to develop appropriate peer relationships, a lack of social and emotional reciprocity, difficulty with interpersonal contact, and marked impairment in the use of multiple nonverbal cues and behaviors.

On June 28, 2011 OWCP referred appellant for a second opinion psychiatric evaluation with Dr. Joseph W. Slap, a Board-certified psychiatrist, to determine whether OWCP should expand acceptance to include an aggravation of appellant's Asperger's disorder and anxiety disorder. In an August 1, 2011 report, Dr. Slap diagnosed Asperger's disorder. He noted that Asperger's disorder was present during appellant's childhood, but did not interfere with his work until he was promoted. Dr. Slap reasoned that the promotion resulted in appellant's inability to do his new job and that appellant's job performance led to a performance evaluation. In a September 16, 2011 supplement to his earlier report, Dr. Slap opined that, if appellant's job promotion had occurred before June 15, 2005, or was discussed at the progress meeting, he would conclude that appellant's headache and high blood pressure, following the June 15, 2005 performance review meeting, were causally related to his Asperger's disorder.

By decision dated September 28, 2011, OWCP denied appellant's claim for compensation (under OWCP Claim No. xxxxxx261) as he had not established a compensable factor of employment and thus had not sustained an injury in the performance of duty.

On October 4, 2011 appellant, through counsel, requested a hearing before an OWCP hearing representative. On December 7, 2011 the hearing representative vacated OWCP's September 28, 2011 decision and remanded for a *de novo* decision. He asked OWCP to resolve contradictory factors of employment, to address all factors of employment raised by appellant, and to discuss substantially duplicative factors addressed in appellant's other claims.

On November 16, 2011 OWCP proposed terminating appellant's wage-loss compensation and medical benefits because he no longer had residuals or disability from his work-related condition. It noted that, at the time of the performance review, appellant was still at the GS-11 building manager position. The retroactive reclassification of his position to a GS-12 did not occur until August 1, 2007, pursuant to a settlement agreement between appellant and the employing establishment.

On December 5, 2011 Dr. Sarnelle reported that he had diagnosed appellant with left ventricular hypertrophy and that he disagreed with Dr. Pickering's opinion.

By decision dated January 24, 2012, OWCP terminated appellant's compensation and medical benefits effective February 12, 2012. It also denied expanding the claim to include a psychiatric condition because an employee's emotional reaction to a performance appraisal, without more, would not be a compensable factor.

On January 30, 2012 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

At the hearing held on April 12, 2012, appellant testified that he did a good job working at a GS-11 level, but that the promotion to do the work of a GS-12 was difficult because of his Asperger's disorder. He related that he had difficulty trying to discern the difference between important and unimportant decisions and that he took things too literally. Appellant reported that when he was involuntarily assigned to tasks that were complicated for him, he started having a difficult time doing the job. He wanted accommodations to have someone else direct him to do the work. Appellant was informed by management that he was going to have a performance review meeting and he felt that the meeting was hostile. He could not talk during the meeting and he got the worst headache he ever had in his life.

Appellant's counsel argued that this case should be combined with other claims because "his condition" was caused by the change in jobs.

In a March 2, 2012 medical opinion, Dr. Evers reported that appellant's increased workload and responsibilities resulted in an exacerbation of his hypertension, his level of anxiety, and his obsessive-compulsive symptoms. He noted that the combination of new work duties before June 15, 2005 and his preexisting, diagnosed Asperger's disorder made his work impossible causing subsequent and ongoing disability.

In a decision dated June 28, 2012, OWCP's hearing representative noted that, while Dr. Sarnelle had been regularly providing form reports, he had not provided a narrative medical report since June 2008. The absence of more recent medical evidence from appellant's treating physician failed to establish disability due to the result of the accepted single episode of aggravation of hypertension. The hearing representative also found that Dr. Sarnelle had provided no medical rationale to support his statement that appellant's condition had worsened. He found that the weight of the medical evidence rested with Dr. Pickering. The hearing representative also denied an expansion of appellant's claim to include aggravation of Asperger's disorder. He found that OWCP had correctly determined that the medical evidence failed to establish that the accepted condition caused or aggravated any other preexisting conditions. The hearing representative affirmed OWCP's January 24, 2012 decision.

On April 8, 2013 appellant, through counsel, requested reconsideration and submitted a March 18, 2013 report from Dr. Sarnelle. Dr. Sarnelle noted that in the weeks preceding the June 15, 2005 meeting, appellant was struggling to meet the conflicting deadlines of his safety and environmental inspection duties and his duties under the cleaning contract. Appellant was also responsible for adhering to a 30-day inspection cycle for the Rodino building cleaning contract. Dr. Sarnelle opined that appellant's underlying hypertension had been aggravated by his increased level of effort. He further noted that he had diagnosed appellant with left ventricular hypertrophy caused by elevated blood pressure which is an irreversible condition. Dr. Sarnelle concluded that this condition had caused him to find that appellant's heart condition had been materially worsened by a factor of employment and would not return to his preinjury status.

Dr. Sarnelle concluded that Dr. Pickering's findings were contrary to the weight of the medical evidence because they were not based on the relevant evidence. Appellant's counsel argued that this report of Dr. Sarnelle was in clear conflict with the report of Dr. Pickering and that the case should be referred for a referee examination.

By decision dated August 26, 2013, OWCP determined that the weight of the medical opinion remained with second opinion examiner Dr. Pickering and denied modification of its earlier decision.

Appellant requested reconsideration and submitted a September 30, 2013 report from Dr. Sarnelle. In the report, Dr. Sarnelle elaborated on his opinion that appellant was injured at work by trying to meet his work quota on June 15, 2005. He noted that appellant was assigned a new set of quotas every month and could not avoid encountering the same time constraints under which he was operating the day of his June 15, 2005 employment injury. Dr. Sarnelle explained that he had permanently disqualified appellant from exposure to his monthly quota because it would further aggravate appellant's hypertensive cardiovascular disease. He contended that OWCP departed from standard medical protocol by failing to seek his opinion prior to terminating appellant's benefits.

In an October 3, 2012 attending physician's report, Dr. Evers noted his treatment of appellant starting September 26, 2005 and continuing on a weekly basis through September 26, 2012. He noted that at the time of his March 23, 2005 injury, appellant was physically incapable of accomplishing his work within the allotted time and that he did not foresee him ever being able to do so as the anxiety had become chronic. Dr. Evers listed the period of total disability as commencing June 20, 2005.

By decision dated November 13, 2012, OWCP denied appellant's claim, under Claim No. xxxxxx261, finding that he failed to establish a compensable factor of federal employment.

On November 19, 2012 appellant, through counsel, requested a hearing. On December 17, 2012 the hearing representative conducted a preliminary review of the case and found that the November 13, 2012 decision was incomplete and remanded the case for a *de novo* decision.

By decision dated August 29, 2013, OWCP denied appellant's claim (xxxxxx261) as the evidence did not establish either that appellant submitted his claim in a timely manner or that he was injured in the performance of duty. It found that the employing establishment did not err or act abusively in scheduling the fitness-for-duty examination on May 14, 2007 and, thus any emotional condition arising from attending this examination is self-generated. OWCP further found that, although appellant submitted his occupational disease claim on March 25, 2011, he did not explain how he "first became aware that [his] alleged condition was caused or aggravated by [his] employment exactly three years prior on March 25, 2008 as the fitness-for-duty [examination] took place on May 14, 2007 and [he] signed the settlement agreement on August 1, 2007 and requested this agreement be rescinded on August 24, 2007." It also noted that his claim was essentially for the same factors in OWCP Claim No. xxxxxx193, and rather than continue to pursue appeal rights, appellant filed this claim.

On September 3, 2013 appellant, through counsel, requested a hearing.

At a hearing held on June 12, 2014 counsel disputed that this claim was duplicative. He argued that appellant's other claims addressed traumatic injuries and that this case was a claim for an occupational disease filed due to accretion of duties at work. Counsel also argued that appellant's claim was timely filed. He stated that appellant became aware of the relationship between his aggravation of Asperger's disorder and his employment as a result of the March 28, 2008 report by his psychologist, and that therefore, the claim filed on March 25, 2011 was timely.

By decision dated October 7, 2014, an OWCP hearing representative affirmed the August 29, 2013 decision (under OWCP Claim No. xxxxxx261) finding that appellant's claim was untimely filed as appellant should have been aware of his condition prior to March 25, 2008. She also noted that no compensable factors of employment have been established and that the claim appeared to be substantially duplicative of earlier denied claims.

By decision dated January 8, 2014, OWCP denied appellant's request for reconsideration in OWCP Claim No. xxxxxx813 without considering the merits of the case.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[17] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[18]

Causal relationship is a medical issue 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 employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[19]

ANALYSIS -- ISSUE 1

Appellant claimed injury due to being scheduled to attend a performance review meeting for which he felt unprepared. He asked that the meeting be postponed, but the performance meeting proceeded as planned. Appellant claimed that he developed a headache. He alleged

[17] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or work shift. *See* 20 C.F.R. § 10.5(ee).

[18] *T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003), *Elaine Pendleton*, 40 ECAB 1143 (1989).

[19] *Id. See also Gary J. Watling*, 52 ECAB 278 (2001).

that, after moving boxes and files at work on that date, his headache became worse and he went home. OWCP accepted appellant's claim for a single episode of aggravation of hypertensive cardiovascular disease causally related to the meeting on June 15, 2005 and the lifting of boxes thereafter.

OWCP accepted appellant's claim for a single episode of aggravation of hypertension/hypertensive cardiovascular disease. Appellant later requested that the claim be expanded to include an aggravation of his underlying Asperger's disorder and anxiety disorder. By decision dated June 28, 2012, OWCP denied expansion of appellant's claim.

In support of his claim to expand the accepted conditions, appellant submitted several reports from Dr. Evers, his clinical psychologist. Dr. Evers has been treating appellant since September 26, 2005 and diagnosed Asperger's disorder and anxiety disorder. In his April 26, 2006 report, he attributed appellant's condition to a recent change of supervision and tenor of the work environment. In his February 6, 2008 report, Dr. Evers quarreled that a referee physician, Dr. Head, had used the SOAF to render his opinion, rather than appellant's own version of events. Dr. Evers' March 25, 2008 report attributed elevated anxiety to a March 23, 2005 flood at work. In his January 26, 2010 report, he noted that appellant was successfully employed until his job condition changed and his job tasks increased. Dr. Evers opined that appellant's underlying Asperger's disorder and associated obsessive-compulsive behaviors made him unable to do his job. His June 7, 2011 report simply described Asperger's disorder and its resulting issues. In the March 2, 2012 report, Dr. Evers opined, within a reasonable degree of psychological probability, that appellant's increased workload and responsibilities, later acknowledged as duties of a GS-12, resulted in the exacerbation of his hypertension, his anxiety, and his obsessive-compulsive symptomology. He noted that the combination of increased higher level duties associated with the reclassification of his position to a GS-12 and his Asperger's disorder made completion of those tasks impossible.

Dr. Evers' reports fail to relate any of appellant's symptoms to the actual meeting in question that took place on June 15, 2005. Rather, he associates the aggravation of his Asperger's disorder and his anxiety disorder variably with change of supervisor, tenor of work environment, flood, conflicting directives, and increased workload and responsibilities due to a grade increase which appellant had sought and ultimately received.[20] The elevation to or reclassification of that position was not the topic of that meeting. The topic of the meeting was a routine, mid-year review of his performance for the previous six months. In fact, evidence supports that the reclassification of the position to a GS-12 did not take place until the settlement award in 2007.

The Board finds Dr. Evers' reports are insufficient to establish additional conditions due to the accepted work incident. A medical report that provides no opinion on causal relationship between the accepted incident and a medical condition is of no probative value.[21]

[20] In other nonrelevant reports, Dr. Evers also seems to have attributed appellant's symptoms to being required to undergo a fitness-for-duty evaluation and also attempted to use the Asperger's disorder to vacate a settlement agreement.

[21] See *Margorie A. Ferrandino*, Docket No. 95-772 (issued May 2, 1997).

Dr. Verdon had conducted a second opinion psychological assessment to determine whether appellant remained disabled, but diagnosed only obsessive-compulsive disorder which he opined was not due to or aggravated by his federal employment.

OWCP had found a conflict of medical opinion had been created between Dr. Evers and Dr. Verdon as to appellant's ability to return to work and referred appellant for an independent medical examination with Dr. Head. In his report of December 30, 2007, Dr. Head found that appellant had sustained no psychiatric condition related to the work incident of June 15, 2005. He determined that appellant could return to work full time without restrictions. Dr. Head noted that, if possible, he would suggest that appellant be assigned another supervisor to avoid any potential interpersonal conflict.

OWCP had also referred appellant to Dr. Slap in order to further develop his specific request that the claim be expanded to include an aggravation of his Asperger's disorder and his anxiety disorder. Dr. Slap diagnosed Asperger's disorder and noted that, although this had been present during appellant's childhood, it did not interfere with his work until he was promoted to a GS-12. He claimed it was this promotion that resulted in his being unable to perform his job adequately which then led to a performance evaluation.[22] Dr. Slap further clarified in a September 16, 2011 updated report, that, if appellant's promotion occurred before June 15, 2005 or was discussed at the progress meeting, he would conclude that appellant's Asperger's disorder was related to the June 15, 2005 meeting. As noted, the evidence supports that the retroactive promotion did not occur until 2007, two years after that meeting.

OWCP accepted one incident of aggravation of hypertension related to the June 15, 2005 performance review meeting. The Board finds there is no evidence to establish any reference to a promotion during the mid-year performance review. The program review evaluations results memorandum for that meeting listed the following deficiencies in his performance:

1. Failed to provide any cleaning inspections for the past three months.

2. Failed to provide any records of meetings held with OCNJ (Janitorial Contractor).

3. Failed to provide any documents authorizing payments for landscaping.

4. Failed to provide a copy of Janitorial Contract and any modifications

5. Failed to provide a copy of OCNJ's "Quality Control Program" for the last three (3) months.

6. Failed to keep records of meetings held with tenants agencies (times and dates).

7. Failed to provide cleaning inspections for the 2nd floor cafeteria.

[22] The Board notes that this medical report was previously evaluated and discussed by the Board in *N.T.*, Docket No. 12-1024 (issued December 20, 2012) (the Board found that this report failed to establish an injury causally related to a May 14, 2007 employment incident).

Neither Dr. Evers, Dr. Verdon, Dr. Head, nor Dr. Slap ever cites the performance review meeting of June 15, 2005, or any later box moving, as a cause of any aggravation of appellant's preexisting Asperger's disorder and anxiety disorder.[23]

The Board further notes that administrative or personnel matters, such as performance reviews and promotions, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[24] Although the Board has held that coverage will be afforded where the evidence establishes error or abuse on the part of the employing establishment,[25] appellant has provided no such evidence on the part of the employing establishment in the conduct of this routine, mid-year performance review meeting nor does it establish error or abuse associated with the promotion of or reclassification of appellant to the GS-12 position.[26]

The Board finds that as appellant has submitted no rationalized medical evidence to support an aggravation of Asperger's disorder or anxiety disorder causally related to a June 15, 2005 employment injury, he has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[27] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[28] To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition which requires further medical treatment.[29]

OWCP's burden of proof to terminate compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[30] The opinion of the physician must be based on a complete factual and medical background of the

[23] *See William D. Starks*, 23 ECAB 85 (1971).

[24] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[25] *See William H. Fortner*, 49 ECAB 324 (1998).

[26] *Supra* note 21.

[27] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[28] *Mary A. Lowe*, 52 ECAB 223 (2001).

[29] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

[30] *Mary Lou Barragy*, 46 ECAB 781 (1995).

claimant, must be one of reasonable medical certainty, and must be supported by medical rationale.[31]

ANALYSIS -- ISSUE 2

In a decision dated January 24, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 12, 2012.

The Board notes that the only medical condition accepted by OWCP in this claim was a single episode of aggravation of hypertension or hypertensive heart disease without heart failure. OWCP referred appellant, along with the medical record, a SOAF, and questions to Dr. Pickering, the second opinion cardiologist, for a determination of whether appellant continued to have residuals of the accepted condition. Dr. Pickering found that appellant had a history of reactive hypertension secondary to Asperger's disorder, but that the hypertension had not resulted in any endpoints, no heart disease or stroke. He found the underlying hypertension not an employment-limiting disorder and any disability determination would be deferred to psychological considerations. OWCP requested clarification from Dr. Pickering and, in his May 16, 2011 supplemental report, he noted a diagnosis of benign hypertension and that the underlying hypertension was not medically connected to factors of his employment.

Although Dr. Pickering questioned whether the meeting of June 15, 2005 would have initially aggravated his preexisting hypertension, he nonetheless found unequivocally that appellant's underlying hypertension was not precipitated, accelerated, or proximately caused by factors of employment. The Board finds that OWCP properly relied upon Dr. Pickering's medical opinion, which provided a rationalized explanation as to the status of the accepted conditions, to terminate appellant's compensation and medical benefits.

Dr. Sarnelle, appellant's treating cardiologist, opined in multiple reports commencing June 23, 2005 that appellant's hypertension was materially worsened by the June 15, 2005 incident, an opinion he still held in his September 30, 2013 report. The Board notes, however, that his report was based on an inaccurate factual history and attributed appellant's elevated blood pressure to the physical exertion of "hurrying about the building" in order to "make up time" and not to the June 15, 2005 meeting or later box lifting, the only incidents accepted by OWCP. The Board has found that medical reports based on an inaccurate factual history are of limited probative value.[32]

The Board finds that Dr. Pickering's report was based on the SOAF and a physical examination, provided a thorough report and a rationalized basis for his opinion. The Board finds that OWCP met its burden of proof to establish that the single episode of aggravation of hypertension/hypertensive cardiovascular disease had resolved by February 12, 2012 based on the report of Dr. Pickering.

[31] *J.M.*, 58 ECAB 303 (2007).

[32] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

LEGAL PRECEDENT -- ISSUE 3

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that any subsequent disability is causally related to the accepted injury.[33]

To establish a causal relationship between the claimed condition, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[34] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[35] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[36]

Causal relationship is a medical issue 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 employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[37]

ANALYSIS -- ISSUE 3

Following the termination of his compensation benefits, appellant submitted additional medical evidence from Dr. Evers and Dr. Sarnelle.

In his March 2, 2012 opinion, Dr. Evers reported that appellant's increased workload and responsibilities resulted in an exacerbation of his hypertension, his level of anxiety, and his obsessive-compulsive symptoms. He noted that the combination of new work duties before June 15, 2005 and his preexisting, diagnosed Asperger's disorder made his work impossible, causing subsequent and ongoing disability. This report fails to establish any condition causally related to the accepted incident. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.[38] Here, Dr. Evers failed to relate appellant's conditions to the June 15, 2005 meeting, and as, his opinion lacks probative value.

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[33] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

[34] *G.T.*, 59 ECAB 447 (2008); *Elizabeth Stanislave*, 49 ECAB 540 (1998).

[35] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[36] *Ernest St. Pierre,* 51 ECAB 623 (2000).

[37] *Supra* note 19.

[38] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

Dr. Sarnelle's March 18, 2013 report related appellant's hypertension to struggling to meet the conflicting deadlines of his safety and environmental inspection duties, duties under the cleaning contract, and being responsible for adhering to a 30-day inspection cycle for the Rodino building cleaning contract. Although he found the elevated blood pressure to be an irreversible condition caused by employment factors, he did not relate this condition to the June 15, 2005 meeting or later box lifting. The Board finds that Dr. Sarnelle's report is insufficient to overcome the weight of Dr. Pickering, whose report was based on the SOAF, an accurate factual history, and provided rationalized reasoning for his opinion.

Neither Dr. Evers nor Dr. Sarnelle offered a rationalized medical opinion explaining how these conditions were causally related to the one accepted incident of a performance review meeting on June 15, 2005. These reports are therefore of diminished probative value and do not outweigh the report of Dr. Pickering.[39]

LEGAL PRECEDENT -- ISSUE 4

Under section 8128(a) of FECA,[40] OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

> (i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
>
> (ii) Advances a relevant legal argument not previously considered by OWCP; or
>
> (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.[41]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[42]

ANALYSIS -- ISSUE 4

On reconsideration appellant submitted a report from Dr. Sarnelle dated September 30, 2013. Dr. Sarnelle reiterated his disagreement with Dr. Pickering's report and argued that it was not standard protocol to have terminated his patient's compensation benefits without asking him for comment.

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[39] *See I.J.*, 59 ECAB 408 (2008).

[40] *Supra* note 1.

[41] 20 C.F.R. § 10.606(b)(3).

[42] *Id*. at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

The Board finds that Dr. Sarnelle's report was repetitive of previous findings and failed to offer any rationalized evidence to establish continuing disability due to the one accepted episode of aggravation of appellant's hypertension due to the June 15, 2005 meeting. The Board has found that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[43] As appellant provided no arguments which would show a legal error by OWCP, did not advance a relevant legal argument not previously considered by OWCP, and failed to submit any new, relevant medical evidence, the Board finds OWCP properly denied any further merit review.

LEGAL PRECEDENT -- ISSUE 5

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.[44] In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

> The immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate supervisors reasonably on notice of an on-the-job injury or death; or
>
> Written notice of injury or death as specified in section 8119 was given within 30 days.[45]

Section 8119 of FECA provides that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.[46] Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation. For actual knowledge of a supervisor to be regarded as timely filed, an employee must show not only that the immediate supervisor knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.[47]

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[43] *E.O.*, Docket No. 15-0635 (issued June 5, 2015); *see also Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[44] *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

[45] 5 U.S.C. § 8122(a).

[46] *Id.* at § 8119; *Larry E. Young*, 52 ECAB 265 (2001).

[47] *Debra Young Bruce*, 52 ECAB 315 (2001).

Section 8122(b) provides that the time for filing in latent disability cases does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.[48]

In cases of occupational disease, the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware of a possible relationship between his condition and his employment. When an employee becomes aware or reasonably should have been aware that he or she has a condition which has been adversely affected by factors of his or her federal employment, such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent. Where the employee continues in the same employment after he reasonably should have been aware that he has a condition which has been adversely affected by factors of federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.[49] The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.[50]

ANALYSIS -- ISSUE 5

Appellant alleges that he developed psychological decompensation, aggravation of Asperger's Disorder, and aggravation of anxiety as a result of the accretion of duties caused by a change in his level of responsibility. OWCP denied his occupational disease as untimely filed.

It was appellant's responsibility to file his claim within three years of when he was aware, or reasonably should have been aware, of a possible relationship between his condition and his employment.[51] Furthermore, his claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior or another employing establishment official had actual knowledge of the injury within 30 days of the date of the injury or under section 8122(a)(2) if written notice of the injury was given within 30 days.[52]

Appellant alleged that his injury was caused by an accretion of factors of his federal employment. He made various allegations with regard to the dates that the employment factors occurred, but the earliest date is in July 2004. The latest date that appellant would have been exposed to the factors of federal employment would have been September 4, 2007, the date he stopped working for the employing establishment. At the hearing, counsel contended that

[48] *See J.S.*, Docket No. 13-252 (issued March 27, 2013).

[49] *Larry E. Young*, *supra* note 46.

[50] *See T.H.*, Docket No. 14-909 (issued November 6, 2014).

[51] *B.H.*, Docket No. 15-0970 (issued August 17, 2015).

[52] *L.K.*, Docket No. 14-2025 (issued January 16, 2005); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (March 1993).

appellant was first made aware of the correlation between the aggravation of his Asperger's disorder and his federal employment duties as of the date of Dr. Evers' March 25, 2008 report. On appeal, he alleged that the date of awareness was actually June 26, 2010. Appellant filed his claim on March 25, 2011.

The Board finds that appellant was aware of the potential relationship between his relationship between his medical conditions and his federal employment much earlier than March 25, 2011. In his October 19, 2005 letter to Dr. Sarnelle, appellant described the change in his duties and the effect that it had on his health. Dr. Sarnelle noted in his July 9, 2007 medical report that appellant had developed an anxiety condition while working as a building manager, and that the employment factors contributed to this condition.

Although appellant places his date of first awareness of the relationship between his psychological condition (Asperger's disorder and anxiety disorder) as the date of Dr. Evers' March 25, 2008 report, this is contradicted by this very report. Dr. Evers noted that he began to see appellant on September 26, 2005 and his report of April 26, 2006 clearly discusses that appellant's presenting symptoms were only part of his more pervasive lifelong condition of Asperger's disorder, and that, due to a recent change of supervision and tenor of the work environment, his symptoms were exacerbated and these changes heightened his levels of stress and anxiety. The Board finds that at least by October 5, 2006, when appellant informally requested OWCP to include in his hypertension claim an aggravation of Asperger's disorder and his anxiety disorder, appellant was well aware of the condition and its relation to his employment. Appellant was last exposed to employment factors on June 15, 2005.

Appellant's letter to Dr. Sarnelle, his statements to OWCP, and the medical reports of Drs. Sarnelle and Evers indicate that appellant was aware of the potential relationship between his Asperger's disorder or his anxiety condition and his federal employment at least by October 2006, well over three years prior to the filing of his occupational disease claim on March 25, 2011.

Appellant's claim would still be regarded as timely under section 8122(a) of FECA if his immediate supervisor or another employing establishment official had actual knowledge of the injury within 30 days of the date of injury or under section 8122(a)(2) if written notice of the injury was provided within 30 days.[53] The requirement states that the knowledge must be such as to put the immediate supervisor on notice of an on-the-job injury or death. An employee must therefore show not only that his or her immediate supervisor knew he or she was injured, but that the supervisor knew that the injury was due to work.[54] The Board notes that the record fails to establish that appellant provided his immediate supervisor the requisite knowledge that the alleged increase in duties when he was transferred to the Rodino building were sufficient to aggravate his preexisting Asperger's disorder or anxiety disorder. Accordingly, the Board finds that the exceptions to the statute have not been met to establish a timely claim.

[53] *L.K.*, Docket No. 14-2025 (issued January 16, 2005); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (March 1993).

[54] *Richard E. Jacobson*, 33 ECAB 1517 (1982).

Consequently, appellant has not met his burden of proof to establish that his claim was timely filed under the applicable time limitation periods as set forth in FECA.[55]

CONCLUSION

The Board finds that OWCP properly denied expansion of appellant's claim to include aggravation of Asperger's disorder. The Board further finds that OWCP properly terminated his compensation and medical benefits effective February 12, 2012, and denied his claim of continued disability after February 12, 2012 causally related to the accepted condition. The Board finds that OWCP properly denied a merit review under 5 U.S.C. § 8128(a) and properly found appellant's occupational disease claim was barred under the applicable time limitation provisions of FECA.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 7 and January 8, 2014 and August 26, 2013 be, and they are, affirmed.

Issued: February 19, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[55] In light of this finding, the Board will not discuss any aspects of the merits of the occupational disease claim.