

On appeal, appellant argues that he presented relevant and pertinent new evidence showing that his supervisor was aware of his underlying mental condition and that her harassment of him was deliberate and premeditated.

FACTUAL HISTORY

On March 15, 2012 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition due to factors of his federal employment, including harassment and threats of disciplinary action from his supervisor, P.B. Appellant first became aware of his claimed condition and attributed it to his employment on January 27, 2012. He stated that his stress level at work was fine until P.B. arrived. Appellant alleged that she had been trying to provoke him to anger, was loud and rude to him on January 26, 2012, and then called him into her office for an improper predisciplinary interview (PDI) on January 27, 2012. He stopped work on January 27, 2012 and had not returned.

By decision dated December 13, 2012, OWCP denied appellant's claim finding that the evidence did not establish an emotional condition arising from a compensable factor of employment.

On January 1, 2013 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated April 24, 2013, the OWCP hearing representative affirmed the prior decision as the factual evidence failed to establish improper PDIs, specific acts of harassment, or improper treatment by P.B.

Appellant requested reconsideration and submitted a March 27, 2014 witness statement from an anonymous city letter carrier at the employing establishment attesting to P.B.'s, rude and unprofessional behavior, an April 1, 2014 statement from his wife alleging that he had changed due to work events, and a narrative statement dated April 13, 2014 reiterating his allegations.

In a March 28, 2014 witness statement, appellant's coworker, S.G., testified that P.B. would yell at carriers and clerks, loved confrontations, created tension and stress, and often added to the employees' stress by refusing to pay employees if they called out sick, no matter what their reasons were.

In a witness statement dated March 29, 2014 another coworker, W.G., stated that he "noticed" a confrontation between appellant and P.B. "just about on a daily basis" and recalled on or around January 25, 2012 that she "was all up in [appellant's] face questioning him about the work from the day before."

In an April 3, 2014 witness statement, an anonymous coworker stated that P.B. called appellant into her office on December 6, 2011 for a PDI for unauthorized overtime that could lead to disciplinary actions. The coworker noted witnessing the confrontation between P.B. and appellant on January 26, 2012. The witness testified that the next day on January 27, 2012 P.B. called appellant into her office for another PDI and stated, "This is a PDI for unauthorized overtime." Appellant became agitated, requested the Employee Assistance Program (EAP) number, and ended the PDI to make the telephone call. After speaking with an EAP

representative, appellant told the witness that he was advised to seek medical attention, and that P.B. instructed him to go to the I&O Clinic in Hampton.

By decision dated December 11, 2014, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be reviewed within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP improperly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

Appellant disagreed with the denial of his claim for an emotional condition and timely requested reconsideration. The underlying issue on reconsideration was whether he established a compensable factor of employment. Appellant alleged that his supervisor, P.B., caused stress due to harassment and threats of disciplinary action, specifically being loud and rude to him on January 26, 2012 and calling him into her office for an improper PDI on January 27, 2012. In an April 24, 2013 decision, an OWCP hearing representative found that the factual evidence failed to establish improper PDI, specific acts of harassment, or improper treatment by P.B.

³ *Supra* note 1. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁵ 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

The Board finds that appellant submitted pertinent new evidence relevant to the denial of his claim of an emotional condition. The evidence pertains to whether appellant established a compensable factor of employment.⁸ He submitted a March 28, 2014 witness statement from his coworker, S.G., testifying that P.B. would yell at carriers and clerks, loved confrontations, created tension and stress, and often added to the employees' stress by refusing to pay employees if they called out sick, no matter what their reasons were. Appellant also submitted a witness statement dated March 29, 2014 from another coworker, W.G., who stated that he "noticed" a confrontation between appellant and P.B. "just about on a daily basis" and recalled on or around January 25, 2012 that she "was all up in [appellant's] face questioning him about the work from the day before." In an April 3, 2014 witness statement, an anonymous coworker noted witnessing the confrontation between P.B. and appellant on January 26, 2012. The witness testified that the next day on January 27, 2012 P.B. called appellant into her office for another PDI and stated, "This is a PDI for unauthorized overtime." Appellant became agitated, requested the EAP number, and ended the PDI to make the telephone call. After speaking with an EAP representative, appellant told the witness that he was advised to seek medical attention, and that P.B. instructed him to go to the I&O Clinic in Hampton. He submitted evidence concerning specific dates and encounters with his supervisor. The Board finds that this evidence is new, relevant, and pertinent to the matter of whether appellant established improper PDIs, harassment, or improper treatment by P.B. Therefore, this evidence is relevant to appellant's claim of an emotional condition.

Reopening a claim for merit review does not require a claimant to submit all evidence, which may be necessary to discharge his burden of proof.⁹ If OWCP should determine that the new evidence submitted lacks probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.¹⁰

The Board finds that appellant's submission of pertinent new and relevant evidence on reconsideration entitles him to a merit review under 5 U.S.C. § 8128(a). OWCP's decision dated April 8, 2013 is hereby set aside. After this and such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP improperly refused to reopen appellant's case for further reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

⁸ See *P.H.*, Docket No. 13-1391 (issued August 13, 2014) (where the Board found that the evidence submitted with the claimant's request for reconsideration addressed her work performance and her interactions at work with a subordinate claims examiner and was, therefore, relevant to her emotional condition claim).

⁹ *Id.*

¹⁰ See *C.M.*, Docket No. 14-1887 (issued May 6, 2015).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: February 22, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board