

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

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kansas City, MO, Employer**

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**Docket No. 17-1412  
Issued: November 20, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 13, 2017 appellant filed a timely application for review from a February 22, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed from October 14, 2016, the date of the most recent merit decision, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 13, 2015 appellant, then a 35-year-old building equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained major depressive disorder with anxious distress as a result of harassment and intimidation in a hostile work environment. The claim form did not indicate that he stopped work.

In a statement dated September 29, 2015, appellant alleged that he had been subjected to retaliation for taking an absence from work due to a physical disability. He noted that he had a service-connected disability and previously had been diagnosed with major depressive disorder and anxious distress.

In progress notes dated August 17, 2015, Dr. Shreeja Kumar, a Board-certified psychiatrist, diagnosed major depression recurrent with anxious distress. She recommended medication and therapy. At the session, appellant reported to her that he had taken some leave from work lately and that he was stressed in part due to work.

On October 15, 2015 the employing establishment controverted appellant's claim. It alleged that his claims of harassment were vague and unsubstantiated and that he had provided no medical evidence demonstrating a connection between his diagnosed conditions and factors of his federal employment.

By letter dated November 19, 2015, OWCP informed appellant of the evidence needed to establish his claim and noted that he had not submitted sufficient factual or medical evidence. It requested that he respond to a factual development questionnaire and afforded him 30 days to submit additional evidence to the record. On the same date, OWCP sent another development questionnaire to the employing establishment regarding the factual aspects of appellant's claim. Neither appellant nor the employing establishment submitted additional evidence or responded to OWCP's questionnaire.

By decision dated December 28, 2015, OWCP denied appellant's claim. It found that he had not submitted sufficient factual evidence to support that the claimed employment factors occurred as alleged. Thus, "there is no factual basis for the claim."

By letter dated June 6, 2016, a coworker verified that she had filed a grievance on behalf of appellant for harassment by managers of the employing establishment.

In an attending physician's report (Form CA-20) dated May 23, 2016, Dr. Kumar diagnosed major depressive disorder. She checked a box marked "yes" indicating that she believed that his condition was caused or aggravated by an employment activity, with no elaboration. Dr. Kumar noted that appellant had continued symptoms, which were exacerbated by stress, and that he had high anxiety when he "goes out."

By an appeal request form received on June 15, 2016, appellant requested reconsideration of OWCP's December 28, 2015 decision. With his request, he included a narrative statement dated October 10, 2015. Appellant alleged that someone had written a note on a route sheet reading "Did you think I would come to work more than 3 days per week?" and that this

constituted harassment, intimidation, disparate treatment, discrimination, and a hostile work environment.

Appellant also responded to OWCP's development questionnaire by letter dated June 8, 2016. He identified the specific supervisors alleged to have harassed him; detailed a number of incidents alleged to have constituted harassment, intimidation, disparate treatment, discrimination, and a hostile work environment; and noted that he had filed a grievance and a complaint with the Equal Employment Opportunity Commission. The incidents appellant alleged included being criticized for taking a late lunch break, being told not to wear a headset radio when he did not even own one, and the written note on his route sheet mentioned above. He alleged that his depression and anxiety was aggravated by his work environment.

On July 22, 2016 the employing establishment responded to appellant's allegations. It stated that he was individually informed of the policy regarding headset radios because he had missed a general meeting on the topic. The employing establishment further stated that the note on appellant's route sheet had been written by another employee, who had been informed by a supervisor that the comment was inappropriate and would not be tolerated.

In progress notes dated July 20, 2016, Dr. Kumar reviewed appellant's diagnoses, symptoms, and prescriptions. She then wrote, "It is my professional opinion that [appellant's] medical condition is exacerbated by stresses with his current employment."

By decision dated October 14, 2016, OWCP reviewed the merits of appellant's claim and affirmed the December 28, 2015 decision as modified. It found that he had not established any incidents or events that would afford coverage under FECA, because there were no covered incidents that occurred in the performance of duty.<sup>2</sup> OWCP found that appellant had also not submitted sufficient medical evidence to support causal relationship.

By an appeal request form received January 20, 2017, appellant again requested reconsideration. With his request, he included a short statement contending that he had submitted sufficient medical evidence to establish his claim.

By decision dated February 22, 2017, OWCP denied appellant's request for reconsideration. It found that he had not submitted any relevant evidence or legal arguments not previously considered in support of his request.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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.<sup>3</sup> Section 10.608(b) of OWCP's regulations

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<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

With his request for reconsideration, received January 25, 2017, appellant submitted only a short narrative statement contending that he had submitted sufficient medical evidence to establish his claim.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish that the alleged incidents occurred in the performance of duty. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in this claim. In his January 25, 2017 request for reconsideration, appellant merely contended that he had submitted sufficient medical evidence to establish causal relationship. However, OWCP denied his claim by an October 14, 2016 decision, because he had not established any compensable employment factors within the performance of duty. As such, appellant did not submit any evidence relevant to the underlying reason his claim was denied on October 14, 2016.<sup>5</sup> He therefore did not meet any of the requirements to warrant reconsideration of his claim under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>4</sup> *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

<sup>5</sup> The Board has held that the submission of evidence or argument which does not address the particular issue involved in the case does not constitute a basis for reopening a case. *A.M.*, Docket No. 16-1875 (issued August 23, 2017); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 22, 2017 is affirmed.

Issued: November 20, 2017  
Washington, DC

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

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

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