

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

J.T., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Kansas City, MO,
Employer**)

**Docket No. 18-0087
Issued: February 14, 2018**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 8, 2017 appellant filed a timely appeal from a February 22, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the most recent merit decision dated September 20, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 3, 2016 appellant, then a 35-year-old building equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed major depressive disorder with anxious distress as a result of his federal employment. Specifically, he alleged that he had been subjected to a hostile work environment, including harassment, intimidation, disparate treatment, and discrimination on the basis of race, color, and physical/mental disability.

By letter dated June 6, 2016, the employing establishment controverted appellant's claim. It noted that his allegations regarding harassment and/or mistreatment were vague and unsubstantiated, that he had a preexisting service-related disability for which he had previously been diagnosed with major depressive disorder with anxious distress, and that he had not submitted any medical evidence substantiating his claim of harassment.

In a narrative statement dated April 12, 2016, appellant outlined the circumstances underlying his claim. He alleged that he had been harassed on an almost daily basis by management officials who made false accusations in retaliation for his filing a claim with the Equal Employment Opportunity Commission. Appellant recalled that on the night of April 5, 2016 he reported to work and noticed that his employee badge had been deactivated in certain areas of the building, which he needed access to in order to perform his duties. He was then called into an office *via* radio and instructed to take all calls for building engineers. On the morning of April 6, 2016, appellant recalled that he had been called into an office to meet with a supervisor about allegedly leaving the premises for approximately five hours on March 15, 2016, an event appellant did not remember. He also revealed that he had a service-connective disability and had previously been diagnosed with major depressive disorder with anxious distress, which was treated at a Veterans Health Administration hospital.

In a progress note dated April 6, 2016, Dr. Shreeja Kumar, a Board-certified psychiatrist, reported that appellant felt badgered at work and subjected to retaliation. Appellant reported trouble sleeping and had thoughts of harm to other workers and management, without plan or intent. Dr. Kumar recommended an increase of his dosage of sertraline, as well as referral to an anger management group and discussion of a safety plan.

By letter dated June 8, 2016, OWCP informed appellant of the evidence needed to establish his claim. It advised him that his statement was vague and unclear as to what medical condition he was claiming as work related, as well as which incidents he believed caused him to develop a psychiatric condition. OWCP noted that appellant had not submitted sufficient evidence to establish the employment factors alleged to have caused injury, and that he had not submitted a medical report containing a physician's opinion as to the cause of a diagnosed condition. It requested that he respond to a claim development questionnaire. Appellant was afforded 30 days to submit the necessary evidence. He did not respond.

By decision dated September 20, 2016, OWCP denied appellant's claim for compensation. It found that he had not established fact of injury as he had submitted insufficient evidence to establish his claim. OWCP noted that appellant had not provided a detailed statement specifying the factors of his employment allegedly causing his condition, he had not provided corroborating evidence to establish his alleged factors of employment, and he had not

provided a physician's opinion with a diagnosis of a psychiatric condition resulting from a compensable employment factor.²

On January 20, 2017 appellant requested reconsideration of OWCP's September 20, 2016 decision, noting in an attached letter that he was requesting reconsideration claiming he had medical evidence establishing a causal relationship between his claimed condition and factors of his federal employment. With his request, he attached a July 20, 2016 letter from Dr. Kumar. Dr. Kumar noted that appellant had been under her care since December 5, 2013, for major depressive disorder along with chronic pain of the neck and back. She further noted that his symptoms had been exacerbated due to stresses at work. Dr. Kumar opined, "It is my professional opinion that [appellant's] medical condition is exacerbated by stresses with his current employment and would recommend rehabilitation services for him to be able to get back into work force."

By decision dated February 22, 2017, OWCP denied appellant's request for reconsideration without reviewing the merits of his claim. It found that he had not submitted relevant evidence not previously considered by OWCP, because his claim had been denied based on lack of factual evidence establishing the alleged factors of his federal employment.

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.³ Section 10.608(b) of OWCP's regulations 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.⁴

ANALYSIS

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).

OWCP issued a September 20, 2016 decision denying appellant's claim because he had not submitted sufficient factual evidence to support that the claimed factors of his federal employment occurred as alleged. It found that fact of injury was not established. On January 20, 2017 appellant requested reconsideration of this decision.

² OWCP further noted that the date of injury chosen by appellant, that of August 28, 2013, was the same as a date of injury under claim number xxxxxx078, which was currently under review due to a request for reconsideration on that claim.

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

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

The issue is whether the evidence appellant submitted in support of his request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(3). The Board finds that he did not identify a specific point of law or show that OWCP erroneously applied or interpreted a point of law, nor did he not submit relevant and pertinent new evidence. Therefore, the Board finds that OWCP properly determined that appellant was not entitled to further review of the merits.⁵

The underlying issue is whether appellant has established a compensable factor of employment. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence relating to the underlying issue, but appellant did not submit any such evidence in this claim.⁶

With his request, appellant attached a July 20, 2016 letter from Dr. Kumar, containing a diagnosis of major depressive disorder and a statement that his condition was related to “stresses with his current employment.” While this report was new, it was cumulative and irrelevant to the issue of whether appellant established a compensable employment factor.⁷

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. 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).

⁵ See *J.B.*, Docket No. 17-0934 (issued September 1, 2017).

⁶ See *A.J.*, Docket No. 17-1168 (issued December 4, 2017).

⁷ *W.K.*, Docket No. 14-1504 (issued November 20, 2014).

ORDER

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

Issued: February 14, 2018
Washington, DC

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

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

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