

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

C.A., Appellant)	
)	
and)	Docket No. 18-0824
)	Issued: November 15, 2018
DEPARTMENT OF DEFENSE, DEFENSE)	
INTELLIGENCE AGENCY, Quantico, VA,)	
Employer)	
)	

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 March 9, 2018 appellant filed a timely appeal from an October 12, 2017 merit decision and a February 21, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an emotional condition in the performance of duty causally related to the accepted compensable employment factors; and (2) 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 July 19, 2017 appellant, then a 39-year-old counterintelligence officer, filed an occupational disease claim (Form CA-2) alleging that combat stress caused post-traumatic stress disorder (PTSD). He advised that he first became aware of his claimed condition on December 3, 2015 and of its relationship to his federal employment on June 17, 2016. The employing establishment indicated that appellant stopped work on October 16, 2015. It also indicated that the injury was caused by a third party.

In an attached statement dated July 6, 2017, appellant contended that his PTSD was the result of combat stress trauma caused by countless near-death experiences over the course of his civilian employment. He related that he had been deployed to Afghanistan and Iraq three times by the employing establishment for periods in 2007-08, 2011, and 2013, and that upon his return home in 2013 he had trouble assimilating, was depressed, and had insomnia and nightmares. Appellant explained that he was also in the Army Reserves and that his commander, in conjunction with his employing establishment supervisor, obtained assistance from the military at Fort Belvoir Community Hospital, an employing establishment facility, where he was treated for PTSD from June to October 2016. He concluded that the effects of PTSD rendered him unable to work.

In an undated statement, J.W., a supervisory counterintelligence officer, noted that he had worked with appellant since 2009 and became his supervisor in November 2015, after appellant had been absent from work for almost a month. He indicated that appellant was suffering from symptoms of PTSD which led to an unhealthy spiral and caused him to miss work. J.W. noted that appellant checked himself into Fort Belvoir, where appellant was diagnosed with and began treatment for PTSD associated with severe combat trauma. He maintained that the PTSD stemmed from appellant's eight deployments, three for the employing establishment, and five others with the U.S. Army and with a defense contractor. J.W. noted that effective March 18, 2016 the employing establishment suspended appellant's access and clearances to all employing establishment facilities pending the results of a security review and placed him on administrative leave. Appellant was separated from the employing establishment on July 7, 2017.

Submitted with the claim was correspondence relating to the revocation of appellant's security clearance. Correspondence from the Director of the employing establishment to appellant's then counsel, advised that he had no reason to question the determination of the employing establishment's Security Appeals Board that affirmed a final decision revoking his security clearance.

In reports dated February 17 and May 4, 2017 report, Alison Sullivan, a licensed clinical social worker, advised that appellant had been under her care since November 1, 2016 for PTSD and alcohol use disorder, noting that based on a through diagnostic interview and record review, he met the diagnostic criteria for both disorders. She indicated that appellant had inpatient and intensive outpatient treatment for both conditions. Ms. Sullivan advised that the treatment goal was to help him understand how and why he used alcohol to cope with combat-related stress. She sought the development of stress-management coping mechanisms through a recovery support network, self-care strategies, increased development of emotional regulation strategies, and abstinence from alcohol through a 12-step recovery program.

In a May 3, 2017 report, Hedy K. Campos, a psychiatric mental health nurse practitioner, indicated that appellant was first evaluated on January 16, 2017 and was being treated for unspecified anxiety disorder, unspecified mood disorder, and unspecified PTSD with medication and individual counseling at another facility. She listed his medications and opined that his current psychiatric disorders were directly related to his combat experiences while serving in the military.

By development letter dated August 17, 2017, OWCP informed appellant that the evidence submitted was insufficient to support his claim and advised him of the type of evidence needed. It asked him to respond to an attached questionnaire and provide a medical opinion from an attending psychiatrist or clinical psychologist with a detailed description of findings and symptoms, results of all psychological testing, diagnosis and clinical course of treatment followed, and a physician's opinion supported by a medical explanation regarding the cause of his emotional condition it specifically informed him that licensed social workers and psychiatric mental health nurses did not qualify as physicians under FECA, and that their reports were of no probative value unless they were countersigned by a psychiatrist or a clinical psychologist. OWCP afforded appellant 30 days to respond.

By separate letter dated August 17, 2017, OWCP requested that the employing establishment provide additional information concerning appellant's claim.

On September 11, 2017 appellant submitted his completed questionnaire, which he signed. His responses indicated that he had no sources of stress outside of his federal employment. Appellant noted that he had been under the care of a psychiatrist and was hospitalized for PTSD from July to September 2016 at Fort Belvoir. He indicated that he had forwarded all information to validate his claim with his initial packet. Appellant concluded that his mental condition was caused by his employment with the employing establishment and service with the U.S. Army.

By decision dated October 12, 2017, OWCP denied appellant's claim. It accepted that her three deployments by the employing establishment to Afghanistan and Iraq in 2007-08, 2011, and 2013 were compensable factors of employment, but that the revocation of his security clearance was not. OWCP found that the medical evidence submitted was signed solely by social workers and nurse practitioners, and was therefore insufficient to establish a diagnosed medical condition causally related to the accepted employment factors. Therefore, "the requirement has not been met for establishing an injury ... as defined by the FECA."²

On February 13, 2018 appellant requested reconsideration. He maintained that the documentation provided was sufficient to establish his claim. Appellant again forwarded a copy of Ms. Campos' May 3, 2017 letter in which she opined that his psychiatric disorders were directly related to his combat experiences while serving with the employing establishment.

² By appeal request form postmarked December 1, 2017, appellant requested a review of the written record with OWCP's Branch and Hearings and Review. By decision dated January 10, 2018, a representative of OWCP's Branch of Hearings and Review denied his request for a review of the written record as untimely filed. The representative also noted that consideration was given as to whether to grant appellant a discretionary hearing, but determined that the merit issue in appellant's case could equally be addressed by requesting reconsideration before OWCP.

By decision dated February 21, 2018, OWCP denied appellant's claim without reconsideration of the merits. It found that, as he neither raised substantive legal questions nor submitted new and relevant evidence, his request was insufficient to warrant a review of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim for an emotional condition in the performance of duty, the claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her claimed condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the stress-related condition.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁹ Neither the mere 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.¹⁰

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ *Charles D. Edwards*, 55 ECAB 258 (2004).

⁷ *Kim Nguyen*, 53 ECAB 127 (2001).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty causally related to the accepted compensable employment factors.

OWCP accepted that appellant’s three deployments to Afghanistan and Iraq in 2007-08, 2011, and 2013 were compensable factors of employment.

As to the claim that the revocation of his security clearance caused appellant’s emotional condition, absent a showing of error and abuse on the part of the employing establishment, administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ An employee’s reaction to an administrative or personnel matter is not covered by FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁴ In this case appellant submitted no evidence to show that the employing establishment’s revocation rose to the level of error and abuse. Because he has not presented sufficient evidence to establish that the employing establishment acted unreasonably or that it engaged in error or abuse, he has failed to identify this as a compensable employment factor.¹⁵

Although appellant established that his three deployments constituted compensable employment factors, the claim must be denied because he failed to submit probative medical evidence that he was injured while in the performance of duty.

The only medical evidence of record are reports from Ms. Sullivan, a licensed clinical social worker, and two different May 3, 2017 reports from Ms. Campos, a psychiatric mental health nurse practitioner. On several occasions OWCP notified appellant of the type of medical evidence needed to establish his claim. In the August 17, 2017 development letter, OWCP clearly explained that he needed to provide a medical opinion from an attending psychiatrist or a clinical psychologist. It further indicated that reports of a licensed social worker and psychiatric mental health nurse did not qualify as physicians under FECA unless their reports were countersigned by

¹¹ Section 8101(2) of FECA provides that “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹² See *S.D.*, Docket No. 16-0999 (issued October 16, 2017).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁴ See *Alfred Arts*, 45 ECAB 530 (1994).

¹⁵ See *D.J.*, Docket No. 16-1540 (issued August 21, 2018).

a psychiatrist or clinical psychologist. OWCP again informed appellant of this in a telephone call on August 22, 2017 and in the October 12, 2017 decision.

As found above, social workers¹⁶ and nurse practitioners¹⁷ are not considered physicians as defined under FECA and thus their reports do not constitute competent medical opinion evidence.¹⁸

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹⁹ Section 8116(a) states that, while an employee is receiving workers' compensation benefits, he or she may not receive salary, pay, or remuneration of any type from the United States, except in return for services actually performed or for certain payments related to service in the Armed Forces, including benefits administered by the Department of Veterans Affairs, unless such benefits are payable for the same injury or the same death being compensated for under FECA.²⁰

Appellant has the burden of proof to establish that the conditions for which he claims compensation were caused or adversely affected by his federal employment.²¹ Part of this burden includes the necessity of presenting rationalized medical evidence, based on a complete factual and medical background, establishing a causal relationship. An award of compensation may not be based upon surmise, conjecture or upon appellant's belief that there is a relationship between his medical conditions and his employment. As the reports from Ms. Sullivan and Ms. Campos constituted the only medical evidence submitted, contrary to his assertion on appeal, he has not submitted sufficient probative medical evidence to establish that he sustained an injury causally related to the accepted compensable employment factor. Appellant therefore failed to discharge his burden of proof.²²

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,²³ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain

¹⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁷ *Sean O'Connell*, 56 ECAB 195 (2004).

¹⁸ *Supra* note 11.

¹⁹ 5 U.S.C. § 8102.

²⁰ *Id.* at § 8116(a).

²¹ *See Calvin E. King*, 51 ECAB 394 (2000).

²² *S.R.*, Docket No. 14-238 (issued May 6, 2014).

²³ 5 U.S.C. § 8128(a).

review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”²⁴

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.²⁵

A request for reconsideration must also be received by OWCP within one year of the date of OWCP’s decision for which review is sought.²⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.²⁸

ANALYSIS -- ISSUE 2

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).

With the February 13, 2018 reconsideration request, appellant submitted correspondence in which he maintained that the evidence submitted was sufficient to establish his claim. He also again submitted Ms. Campos’ May 3, 2017 letter in which she opined that his psychiatric disorders were directly related to his combat experiences while serving with the employing establishment. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.²⁹ With his February 13, 2018 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

²⁴ 20 C.F.R. § 10.606(b)(3).

²⁵ *Id.* at § 10.608(b).

²⁶ *Id.* at § 10.607(a).

²⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

²⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁹ *J.M.*, Docket No. 17-1950 (issued April 2, 2018); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

Consequently, he was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b)(3).³⁰

With respect to the third above-noted requirement under section 10.606(b)(3), appellant did not provide OWCP with relevant and pertinent new evidence. Therefore, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).³¹

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied his reconsideration request.³²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty causally related to the accepted employment factors. The Board also finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

³⁰ 20 C.F.R. § 10.606(b)(3); *see R.M.*, 59 ECAB 690 (2008).

³¹ *Id.* at § 10.606(b)(3)(iii); *see D.P.*, Docket No. 17-0290 (issued May 14, 2018).

³² *M.A.*, Docket No. 16-1846 (issued October 20, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2018 and October 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 15, 2018
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