

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

O.G., Appellant	)	
	)	
and	)	<b>Docket No. 18-0359</b>
	)	<b>Issued: August 7, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bayamon, PR, Employer	)	
	)	

*Appearances:*  
Paul Kalker, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 11, 2017 appellant, through counsel, filed a timely appeal from an August 30, 2017 merit decision and a November 13, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish an emotional condition in the performance of duty; 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).

## **FACTUAL HISTORY**

On March 27, 2017 appellant, then a 55-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a disabling emotional condition due to acts of harassment, mistreatment, and errors and abuse by management. He first became aware of his condition and realized it resulted from his employment on October 29, 2015. The claim form did not indicate whether appellant stopped work.

In a narrative statement, appellant alleged that his illness resulted from management acts of harassment, mistreatment, and error and abuse. He noted the details of his alleged employment factors including: unfounded accusations of being too slow, not completing his work duties, and lying about his physically limited medical conditions; harassment regarding medical documentation in support of his disabilities; unjustified removal of previously granted workplace accommodations; refusal of reasonable requests for assistance, including requests for overtime in order to complete his route; pressure from management to find employment with another post office; compilation of fraudulent inspection reports regarding his performance standards; fraudulent preparation and submission of duty status report (Form CA-17) by management and a malicious characterization of "Family Medical Leave Act" (FMLA); issuance of an unwarranted seven-day suspension on May 14, 2015 and unwarranted letter of warning on May 20, 2017; and false accusations by management resulting in eventual criminal charges for which appellant was eventually found not guilty.

In a development letter dated April 7, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to the attached questionnaire in order to substantiate the factual elements of his claim and provide additional medical evidence to establish that he sustained a diagnosed condition causally related to his federal employment. Appellant was afforded 30 days to submit the necessary evidence. A development letter was also sent to the employing establishment requesting that a knowledgeable supervisor respond as to the accuracy of appellant's allegations and to provide further evidence.

On May 11, 2017 OWCP received the employing establishment's response to its development letter. It responded that it did not concur with appellant's allegations. The employing establishment indicated that his walking limitations were considered when his route was assigned. It explained that because appellant could not meet the goals of his position within the allotted time frame, another carrier provided assistance to complete his route. The employing establishment provided a position description for a city carrier.

In an April 25, 2017 psychiatric report, Dr. Fernando Cabrera, Jr., Board-certified in psychiatry and neurology, indicated that appellant had worked for the employing establishment since 2003. He noted that appellant was first evaluated in 2014 because of anxiety disorder due to stress from a difficult work environment. Dr. Cabrera reviewed appellant's allegations about

management's harassing and discriminatory acts against him. He indicated that appellant developed severe anxiety attacks, tremors, palpitations, chest pain, numbness, weakness, feeling like he wanted to die, inability to sleep, negative view of life, and poor libido. Dr. Cabrera diagnosed adjustment disorder with anxious and depressed mood due to severe stress. He provided examination findings and opined that appellant had a "diagnosis of Adjustment Disorder mixed with depression and anxiety secondary to the labor problems he had at his work and the legal charges of fraud of the [F]ederal [G]overnment."

On June 2, 2017 appellant responded to OWCP's development questionnaire. He contended that management demanded that he violate his medical restrictions and that they did not consider any of his physical limitations specified on his duty status reports (Form CA-17) even though his claim was accepted by OWCP.<sup>3</sup> Appellant also alleged that he was denied assistance with his daily work as a result of a fraudulent inspection of his route performed by another employee with no physical limitations. He explained that because of the fraudulent inspection, he was forced to complete his route faster and work harder and beyond his physical limitations. Appellant further contended that he was given an unnecessary grievance letter and a seven-day suspension for unapproved absences even though he was approved to use FMLA leave. He asserted that management mocked, harassed, and discriminated against him due to his physically disabling conditions. Appellant indicated that management also fabricated criminal charges against him for which he was found not guilty. He reported that he filed a grievance against management for an August 19, 2014 incident and another grievance in connection with a notice of removal from the employing establishment. Appellant also explained that he had been under the care of a psychologist for stress, depression, and anxiety caused by constant threats, harassment, and discrimination from management. He noted that he had no prior emotional conditions or received any prior psychiatric or psychological care before 2014.

OWCP received several witness statements. In a handwritten statement, R.P., appellant's coworker, related that on August 19, 2014 he heard appellant's supervisor, J.S., speaking to appellant in a "harassing way" and demanding to see appellant's medical information because appellant was requesting auxiliary assistance to complete his route. He reported that Supervisor J.S. was refusing to provide assistance and was "outright disrespectful and menacing." In a March 12, 2015 statement, M.T., appellant's shop steward, stated that on that date he and appellant had a meeting with Supervisor J.S. and Manager R.L. regarding how to develop a working plan for appellant due to his physical limitations. He described how J.S. and R.L. discriminated against appellant because of his physical limitations and mistreated him. In an April 27, 2015 statement, V.R., appellant's coworker, related that on March 25, 2015 he witnessed J.S. make fun of and embarrass appellant because of his physical condition. In an April 27, 2015 statement, M.R., appellant's coworker, indicated that on April 14, 2015 he heard J.S. stop by appellant's station, hand him some papers, and tell him that he should work in these places because of his physical condition. He alleged that J.S. was "clearly harassing and discriminating" against appellant because of his physical limitations.

Appellant submitted other documents to support his claim. A Judgment of Acquittal dated October 19, 2016 indicated that appellant was found "not guilty" and acquitted from all criminal

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<sup>3</sup> The Board notes that appellant had seven prior traumatic injury claims.

charges in the federal district court for the District of Puerto Rico relating to false statements, false statements in connection with the receipt of federal employment benefits, theft of government money, and attempting to corruptly influence, delay, or prevent a witness from testifying in connection with the other charges.

OWCP also received a grievance form dated November 7, 2016 from appellant. Appellant challenged whether management had “just cause” to issue a January 26, 2016 Notice of Removal.

By decision dated August 30, 2017, OWCP denied appellant’s emotional condition claim. It determined that he had failed to establish a factual basis for his claim because the evidence submitted was insufficient to substantiate that the incidents occurred as alleged. OWCP also found that appellant had failed to submit sufficient medical evidence to establish a diagnosed condition causally related to factors of his federal employment.

On October 24, 2017 appellant requested reconsideration. In a narrative statement, he indicated that all the facts and circumstances as set forth in his previous statements, previous witness statements, and in the April 25, 2017 medical report of Dr. Cabrera were accurate and true and had been experienced by him.

OWCP received a January 26, 2016 Notice of Removal for the employing establishment, which informed appellant that he was removed from federal employment effective March 4, 2016.

By decision dated November 13, 2017, OWCP denied further merit review of appellant’s claim pursuant to 5 U.S.C. § 8128(a). It found that appellant’s reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of appellant’s claim.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>5</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>6</sup>

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional condition or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>7</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>8</sup> In the case of *Lillian Cutler*,<sup>9</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.<sup>10</sup> When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.<sup>11</sup> On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.<sup>12</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.<sup>13</sup> If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.<sup>14</sup> If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.<sup>15</sup>

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<sup>7</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>8</sup> *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>9</sup> 28 ECAB 125 (1976).

<sup>10</sup> *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>11</sup> *Cutler*, *supra* note 9; *see also Trudy A. Scott*, 52 ECAB 309 (2001).

<sup>12</sup> *William E. Seare*, 47 ECAB 663 (1996).

<sup>13</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>14</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>15</sup> *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

## 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.

Appellant alleged that he developed depression, anxiety, panic attacks, auditory hallucinations, insomnia, and low libido due to alleged discriminatory acts and harassment by management. OWCP denied appellant's claim finding that he failed to establish a factual basis for his emotional condition claim. Initially, the Board disagrees with OWCP's determination that appellant provided only "vague and general information" regarding his claim without supporting evidence or specific examples. The Board notes that appellant submitted a 5-page narrative statement, along with his Form CA-2, detailing the harassing and discriminating behavior he alleged on the part of his supervisor, which he believed contributed to his emotional condition. He also provided a three-page statement in response to OWCP's development questionnaire, in which he reiterated the details of management's alleged behavior, disputes with management over leave, and grievances filed against management.<sup>16</sup> Appellant also submitted witness statements with specific dates and descriptions of management's alleged harassment. Accordingly, the Board finds that appellant's statements contained sufficient details and specific examples to substantiate a factual basis for his claim.

As appellant has sufficiently described the employment factors which he believed contributed to his emotional condition, the Board must initially review whether these alleged incidents and conditions of employment are compensable employment factors under the terms of FECA. He has not alleged his condition was due to any specific job duties under *Cutler*. Instead, appellant has alleged that he was the victim of discrimination and harassment by management.

Appellant made several allegations regarding administrative and personnel actions. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.<sup>17</sup> In *Thomas D. McEuen*,<sup>18</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of an employee. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.<sup>19</sup> In determining whether the employing establishment erred or acted abusively, the Board will examine

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<sup>16</sup> In its August 30, 2017 decision, OWCP noted that these statements were of diminished probative value as it was not clear whether they were signed by appellant. The Board notes, however, that the five-page narrative statement was attached to appellant's Form CA-2, which was signed, and the three-page narrative statement was also attached to a signed certification form dated May 27, 2017.

<sup>17</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>18</sup> 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>19</sup> *William H. Former*, 49 ECAB 324 (1998).

the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>20</sup>

Appellant alleged that management wrongfully issued a seven-day suspension on May 14, 2015 and a Letter of Warning on May 20, 2017. Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.<sup>21</sup> Appellant submitted a grievance form dated November 7, 2016 wherein appellant challenged a January 26, 2016 Notice of Removal. The form, however, does not show error or abuse on behalf of the employing establishment. Rather, it merely noted appellant's challenge and the remedy sought. The Board finds that there is no evidence in the record to establish that appellant was improperly disciplined or provided a Notice of Removal. Appellant has not offered evidence to establish error or abuse or that the employing establishment acted unreasonably in these matters.

The Board also finds that appellant has not met his burden of proof to establish error or abuse in the handling of his requests for workplace assistance due to his medical limitations, including requests for overtime in order to complete his mail route. Assigning work tasks and monitoring work performance are administrative functions of a supervisor.<sup>22</sup> Appellant has not provided probative evidence showing that management committed wrongdoing with respect to his request for assistance.<sup>23</sup> On the contrary, in its response to OWCP's development letter, the employing establishment explained that it had accommodated appellant's medical limitations and provided another carrier to assist him in completing his route within the allotted time frame.

Appellant further alleged that management demanded that he violate his work restrictions and did not consider his physical limitations. He provided a statement from M.T., his shop steward, who described a meeting with appellant's supervisor and manager in which they refused to create a working plan for appellant due to his physical limitations. Although appellant provided a corroborating witness statement, this evidence is insufficient to establish that management erred by not constructing a working plan for appellant.<sup>24</sup> He did not provide probative evidence to show how management's actions during that meeting constituted error or abuse. Mere dislike or disagreement with certain supervisory actions will not be found compensable absent error or abuse on the part of the supervisor.<sup>25</sup> Furthermore, the employing establishment noted in its response to OWCP's development letter that it had considered appellant's walking limitations when it assigned his route.

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<sup>20</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>21</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>22</sup> *Beverly R. Jones*, 55 ECAB 411, 416 (2004).

<sup>23</sup> See *T.H.*, Docket No. 17-1578 (issued April 26, 2018).

<sup>24</sup> See *J.Q.*, Docket No. 17-1276 (issued December 27, 2017).

<sup>25</sup> *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

The record also fails to establish error or abuse in the denial of appellant's use of FMLA leave. The Board notes that the handling of leave<sup>26</sup> is considered an administrative function of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action is not compensable.<sup>27</sup> Appellant has not substantiated error or abuse committed by the employing establishment regarding these administrative actions. The Board finds, therefore, that he has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged that harassment and discriminatory behavior by management caused him stress and anxiety. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these could constitute employment factors.<sup>28</sup> However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>29</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>30</sup>

Appellant asserted that management fraudulently prepared and submitted a Form CA-17 because it did not believe that he had physically disabling conditions. He also related that management conducted a fraudulent inspection of his route. Appellant, however, has not submitted evidence to corroborate these allegations of fraudulent acts on the part of management. Personal perceptions and allegations by a claimant alone are insufficient to establish an employment-related condition.<sup>31</sup>

Appellant further alleged that these fraudulent actions resulted in eventual criminal charges against him. The Board finds, however, that appellant has not provided corroborating or supporting evidence to support his allegations of fraudulent actions by the employing establishment which resulted in criminal charges being filed. Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>32</sup> The only evidence OWCP received in support of appellant's contention was an October 19, 2016 Judgment of Acquittal, which found appellant "not guilty" of several criminal charges. The fact that he was acquitted of all criminal charges, however, does not establish that the employing establishment's actions precipitated such charges or that they had

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<sup>26</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>27</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>28</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>29</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>30</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>31</sup> *J.F.*, 59 ECAB 331 (2008); *Roger Williams*, 52 ECAB 468 (2001).

<sup>32</sup> *M.D.*, 59 ECAB 211 (2007).



harassed or discriminated against him by committing fraud. Because no further evidence was presented to corroborate this allegations, appellant has not established a compensable employment factor in this matter.

Appellant has also alleged that management mocked, harassed, and discriminated against him due to his physical limitations. The Board notes, however, that he did not provide specific dates or other details regarding management's alleged harassing and discriminatory behavior. General allegations of harassment are insufficient to establish that such actions did, in fact, occur.<sup>33</sup>

The evidence of record contains several witness statements from various coworkers, including R.P., V.R., and M.R. They described different scenarios where they overheard appellant's supervisor speaking to him in what they considered to be a harassing way, being disrespectful, making fun of him, refusing to accommodate his restrictions, and suggesting that he look for work elsewhere. While these statements support verbal disagreements between appellant and his supervisor and provided more specific details, the Board finds that they are insufficient to establish that these instances rose to the level of a compensable factor of employment.<sup>34</sup> With regard to emotional claims arising under FECA, the term harassment as applied by the Board is not the equivalent of harassment as defined or implemented by other government agencies, such as the Equal Employment Opportunity Commission, which is charged with statutory authority to investigate and evaluate such matters in the workplace. For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>35</sup> Mere perceptions or feelings of harassment will not support an award of compensation.<sup>36</sup> The Board finds that appellant has not provided corroborating evidence which is of sufficient probative value to demonstrate that management's actions towards him rose to the level of establishing harassment or discrimination under the terms of FECA. Thus, appellant has not established a compensable employment factor under FECA with respect to his alleged harassment and discrimination.

On appeal counsel alleges that the factual and medical evidence of record establish that appellant's debilitating emotional conditions are compensable and that OWCP failed to fulfill its obligation to develop appellant's claim. As explained above, however, the Board found that the evidence of record fails to establish a compensable employment factor under FECA and, therefore, appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

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<sup>33</sup> See *Paul Trotman-Hall*, 45 ECAB 229 (1993).

<sup>34</sup> See *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>35</sup> See *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *T.V.*, Docket No. 16-1519 (issued September 12, 2017); *Beverly R. Jones*, 55 ECAB 411 (2004); *James E. Norris*, 52 ECAB 93 (2000).

<sup>36</sup> *Supra* note 28.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>37</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>38</sup>

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.<sup>39</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>40</sup> 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.<sup>41</sup>

### **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).

Along with his reconsideration request, appellant submitted a narrative statement where he repeated his allegations and indicated that the witness statements, and medical evidence previously submitted were accurate and true. He also provided a January 26, 2016 Notice of Removal from the employing establishment. The Board finds that neither appellant's statement nor the Notice of Removal showed legal error by OWCP or advanced a legal argument not previously considered by OWCP or constituted relevant and pertinent new evidence. Consequently, he was 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).<sup>42</sup>

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<sup>37</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>38</sup> 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>39</sup> 20 C.F.R. § 10.607(a).

<sup>40</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>41</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>42</sup> *T.G.*, Docket No. 18-1064 (issued April 26, 2019).

The underlying issue in this case is whether appellant submitted sufficient evidence to establish a compensable factor of employment. This is a factual issue which must be addressed by relevant new factual evidence.<sup>43</sup> Appellant, however, did not submit any relevant and pertinent new factual evidence to establish a compensable employment factor. Rather, he merely reaffirmed that his previous statements and evidence submitted were accurate and true. Moreover, the Notice of Removal is irrelevant to the establishment of a compensable employment factor. Thus, appellant is also not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).<sup>44</sup>

The Board accordingly finds that appellant has not met any of the requirements of 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 appellant has not met his burden of proof to establish an emotional condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 13 and August 30, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 7, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>43</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>44</sup> *H.H.*, Docket No. 18-1660 (issued March 14, 2019).