

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

_____)	
B.Y., Appellant)	
)	
and)	Docket No. 17-1822
)	Issued: January 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Port Chester, NY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2017 appellant filed a timely appeal from a May 10, 2017 merit decision and an August 15, 2017 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated February 2, 2018, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1822 (issued February 2, 2018). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

ISSUES

The issues are: (1) whether appellant has established an emotional condition in the performance of duty, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 2, 2016 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that, on April 8, 2016, he developed an emotional condition due to harassment and threats from Postmaster C.S. and other employing establishment managers. He stopped work on April 8, 2016 and has not returned.

In undated statements, appellant alleged that Postmaster C.S. improperly challenged a prior workers' compensation claim for a left shoulder injury when he slipped on ice and fell on his back March 24, 2015.³ He indicated that the denial of his shoulder claim caused arthritis of his surgically repaired shoulder to return and also led to a neck strain, which caused him to lose sleep. Appellant alleged that management had sent false pictures to OWCP about his injuries and refused to pay him sick leave. He further alleged that, on April 7, 2016, Postmaster C.S. had management call the police and falsely alleged that he had attacked her. S\Appellant stated that he did not feel safe in the workplace. A partial copy of an April 25, 2016 employing establishment disciplinary action charging appellant with "unauthorized absence from duty/continuous absence" indicated that appellant had been continuously absent from work since April 13, 2016 and failed to follow the absence notification process.

In an April 29, 2016 note, Dr. Frederic Neuman, a psychiatrist, reported that appellant had reaction depression which prevented his ability to work. He opined that appellant would be able to return to work on May 3, 2016. Appellant handwrote on the note that Postmaster C.S. did not "accept this [physician's] note. Not getting paid."⁴ He also submitted medical evidence pertaining to his shoulder condition from Dr. Young Don Oh, a Board-certified orthopedic surgeon, and Dr. Eric K. Zitzmann, a Board-certified orthopedic surgeon.

In a May 11, 2016 letter, Postmaster C.S. noted that, while the employing establishment had controverted appellant's March 24, 2015 claim for a work-related injury, OWCP had denied the claim. She also noted that, between September 2015 and January 2016, he had received different levels of discipline due to his failure to maintain his attendance requirements and failure to perform the duties of his position. The postmaster further noted that appellant had filed complaints with Equal Employment Opportunity Commission (EEOC), which had not issued a decision, and the Merit Systems Protection Board (MSPB), which denied his appeal. She indicated that appellant had not received pay for numerous days since March 2015 due to his failure to

³ OWCP assigned the March 24, 2015 claim File No. xxxxx025. By decision dated February 9, 2017, the Board affirmed OWCP's May 13, 2015 decision finding that appellant had not met his burden of proof to establish a left shoulder or neck injury causally related to the accepted March 24, 2015 employment incident. Docket No. 16-1300 (issued February 9, 2017).

⁴ In a May 3, 2016 note, Dr. Neuman stated that appellant was unable to work.

maintain attendance requirements and failure to provide proper documentation to substantiate his absences. Appellant also had been absent without leave (AWOL) and not received pay as he did not properly document his absences as required. The Postmaster also indicated that appellant did not follow the proper procedures to qualify for Family and Medical Leave Act (FMLA) protection and, therefore, his leave was not covered.

The postmaster indicated that on April 7, 2016, appellant displayed a violent tendency at work and was instructed to leave and return the following day. However, appellant did not follow instructions and drove off in his assigned vehicle. A supervisor was instructed to find him on the street and either have him punch off the clock and go home or report the truck stolen. Since then, appellant had not returned to work. The postmaster further indicated that appellant had received discipline for failure to comply with mandatory proper parking techniques. She also noted that appellant had borrowed money from several employees on numerous occasions.

By development letter dated August 19, 2016, OWCP notified appellant of the factual and medical evidence needed to substantiate his claim. It afforded him 30 days to submit additional evidence.

In an August 17, 2016 letter, Postmaster C.S apologized to all employing establishment employees for the workplace atmosphere. She noted that she would be mindful of her choice of words and behavior to ensure that all employees were treated with dignity and respect at all times.

In an August 30, 2016 statement, Supervisor J.R. indicated that there were constant conflicts between appellant and Postmaster C.S. regarding the way appellant performed his employment duties, which created a stressful situation. He advised that accommodations were made in August 2016, when Postmaster C.S. was reassigned.

In an October 13, 2016 statement, appellant alleged harassment and retaliation by Postmaster C.S. He alleged that she had micro-managed him, called the police on him three times, falsely charged him twice, sent him home, denied pay, denied placement on overtime list, assigned him an unsafe vehicle to use, and improperly sent him for a fitness-for-duty (FFD) examination with a psychologist. Appellant also alleged that he was discriminated against based on race and age.

On October 20, 2016 appellant was placed on emergency off-duty status without pay on a charge that he yelled at Postmaster M.L., including a racial epithet. In a handwritten note on the October 20, 2016 emergency placement charge, he related: "M.L. has showed himself be jealous of my body. By saying I watch you walk. You don't walk but strut." In an October 22, 2016 statement to the employing establishment, appellant contested the October 20, 2016 off-duty placement and alleged that Postmaster M.L issued the action due to racism and in order to incite him.

In an October 25, 2016 statement, appellant alleged that Postmaster M.L, who succeeded Postmaster C.S., told him that people were complaining about him. He alleged that J.S., manager of the employing establishment's office operations, was racist.

Appellant further alleged that the two letters of complaint about him were false and that Postmaster C.S. used the letters as pretext to discipline him.⁵ In a handwritten response regarding the May 7, 2015 complaint, he stated that the letter was placed in his file without his knowledge, he was never confronted, and that this was character assassination.

In an October 27, 2016 statement, appellant indicated that he was diagnosed with stress and depression. He alleged that he was falsely accused of workplace violence and subjected to disparate treatment by Postmasters C.S. and M.L. Appellant alleged that the union had a copy of a statement signed by 30 employees that Postmaster C.S. had threatened him. He added that his EEOC claim was denied and that he had appealed the decision. Appellant also filed an appeal to the MSPB. He alleged that he was subjected to a “KKK style of managing” including intimidation and false charges.

A January 9, 2013 letter of warning for unacceptable conduct was received regarding appellant’s use of profanity on the loading dock on December 14, 2012. A referral form was also received.

By decision dated December 28, 2016, OWCP denied appellant’s claim as the evidence submitted was insufficient to establish a compensable factor of employment.

On January 9, 2017 appellant requested a hearing before an OWCP hearing representative.

Prior to the hearing, appellant submitted additional evidence. This included a December 21, 2016 order from the MSPB, which stated that a recent submission by him was postmarked after the date of its initial decision of December 13, 2016. Appellant was directed to follow the instructions in the December 13, 2016 decision. A January 4, 2017 letter from the employing establishment directed him to contact them to discuss a return-to-duty date.

A hearing was held before an OWCP hearing representative on April 5, 2017, during which appellant testified. He alleged that he had a permanent disability due to a 2006 work-related shoulder injury.⁶ Appellant argued that the employing establishment knew about his disability and, therefore, erroneously challenged his March 24, 2015 injury. He reiterated that Postmaster C.S. denied overtime work, sick pay, and made false charges of misconduct/violence. Appellant also testified that the August 17, 2016 apology letter from Postmaster C.S. did not apply to him because, within a month, “the man [Postmaster M.L.] that replaced her” had charged appellant with the same thing. He argued that the grievance decisions, which were submitted and admitted during the hearing, absolved him of charges of workplace violence. A May 11, 2016 Step B grievance decision of the April 7, 2016 emergency off-duty placement indicated that the matter was settled with wages and benefits restored. A March 10, 2017 pre-arbitration settlement of the October 20, 2016 emergency off-duty placement also indicated that the matter was settled with wages and benefits restored to appellant. Appellant also testified that he had 15 other Step B

⁵ Copies of a May 7, 2015 e-mail from R.M. indicated that the letter carrier for his route had yelled and cursed on March 20, 2015. Another undated e-mail revealed that appellant threw tubs of mail on the floor.

⁶ Under OWCP File No. xxxxx205, date of injury September 7, 2006, OWCP accepted a left shoulder rotator cuff sprain. The file was closed January 11, 2012 with all benefits paid.

grievance decisions in his favor, which he would submit post hearing. He testified that, due to his shoulder injury, he had requested a lighter vehicle to drive and was issued such a vehicle by a decision following an accommodation hearing. The hearing representative requested that appellant submit a copy of the accommodation hearing decision after the hearing. The record was held open for 30 days post hearing to allow for the submission of additional evidence. No additional evidence was received.

By decision dated May 10, 2017, an OWCP hearing representative affirmed the denial of appellant's claim for a work-related emotional condition. He found that the evidence of record was insufficient to establish a compensable factor of employment.

Appellant subsequently alleged, in a May 15, 2017 letter, that OWCP's hearing representative was engaged in a cover-up with the employing establishment. He contended that the hearing representative lied and changed everything he had stated and violated his rights.

In a July 18, 2017 letter, appellant alleged that OWCP's hearing representative had the wrong file number for the left shoulder injury that occurred in September 2006. He alleged the case became a class action that resulted in the employing establishment reinstating all workers who were injured on the job. Appellant alleged that the employing establishment knew since 2009 that an accommodation for his injury had been ordered, however, it was not done until 2016. He indicated that he had medical evidence that confirmed his injury.

Appellant submitted a duplicate copy of the May 11, 2016 challenge letter, which contained handwritten notes referring to Postmaster C.S. The first note indicated that Postmaster C.S. lost more step 3 grievances than him and that she had been removed from her post. The second note revealed that the actions of Postmaster C.S. caused him to borrow money from coworkers and then ridiculed him for doing so.

On August 4, 2017 appellant requested reconsideration.

By decision dated August 15, 2017, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a). It found that he did not offer any corroborating evidence and, thus, the evidence was insufficient to warrant a merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of her federal employment.⁷ To establish an emotional condition in the performance of duty, the claimant must submit the following: (1) medical evidence establishing an emotional condition; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical

⁷ A.C., Docket No. 18-0507 (issued November 26, 2018); *Pamela R. Rice*, 38 ECAB 838 (1987).

opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.¹⁰ 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. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹² However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹³ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁴

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.¹⁵ Although the handling of leave

⁸ *A.C., id.; George H. Clark*, 56 ECAB 162 (2004).

⁹ 28 ECAB 125 (1976).

¹⁰ *See G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *Supra* note 9.

¹² *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹³ *See William H. Fortner*, 49 ECAB 324 (1998).

¹⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.¹⁶

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁷ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁸ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁰ A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.²¹

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 factors of employment and may not be considered.²² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.²³ 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.²⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established a compensable work factor and thus, has not met his burden of proof to establish that he sustained an employment-related emotional condition in the performance of duty.

¹⁶ *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁷ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁸ *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁹ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 17.

²⁰ *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

²¹ *Beverly R. Jones*, 55 ECAB 411 (2004).

²² *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, *supra* note 16.

²³ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²⁴ *Robert Breeden*, *supra* note 17.

Appellant has not attributed his emotional condition to difficulties in carrying out his regular or specially assigned employment duties. He, therefore, has not implicated a compensable factor of employment under *Cutler*.²⁵

In the present case, the Board notes that appellant's primary allegations concern management impropriety, including disciplinary actions against him,²⁶ as well as the handling of his workers' compensation claim,²⁷ and request for reasonable accommodations.²⁸ Appellant also alleged error in management actions,²⁹ of placing letters of complaint in an official file, denying overtime work and sick pay, and a referral for a FFD examination with a psychologist.

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of employing establishment error or abuse and are, therefore, not considered factors of employment. As noted in *Thomas D. McEuen*,³⁰ complaints about the manner in which a supervisor performs his duties or the manner in which a supervisor exercises his discretion falls outside the scope of coverage provided by FECA. It must be established factually that the manager committed error or abuse to support a compensable factor pertaining to any administrative or personnel matter.

Appellant alleged that he was improperly subjected to discipline. The record contains copies of disciplinary actions issued on January 9, 2013 and April 25, and October 20, 2016. However, appellant did not provide any independent or probative evidence to establish that the employing establishment erred or was abusive in issuing any of the discipline.³¹ While grievance decisions of record showed that the April 7 and October 20, 2016 emergency off-duty placements were settled, they do not show that the off-duty placements of April 7 or October 20, 2016 were improper or based on false charges.³² The Board has previously explained that, absent an admission of fault, a settlement agreement does not establish error or abuse on the part of the employing establishment.³³ Additionally, there is no decision from an administrative body such as MSPB or EEOC which showed that appellant was subjected to improper discipline. While appellant appealed the disciplinary matters to the MSPB, the appeal was denied. Thus, he has not established a compensable factor in this regard.

²⁵ *Supra* note 9.

²⁶ *L.R.*, Docket No. 14-1990 (issued January 17, 2015).

²⁷ *See M.R.*, Docket No. 14-0380 (issued August 25, 2014).

²⁸ *See K.M.*, Docket No. 14-1860 (issued June 2, 2015).

²⁹ *See Frank B. Gwodz*, 50 ECAB 434 (1999).

³⁰ *Thomas D. McEuen*, *supra* note 12.

³¹ *E.C.*, Docket No. 15-1743 (issued September 8, 2016).

³² *See Michael A. Salvato*, 53 ECAB 666 (2002).

³³ *Kim Nguyen*, 53 ECAB 127-28 (2001); *see also R.G.*, Docket No. 13-0818 (issued August 1, 2014).

Appellant alleged that letters of complaint about him were improperly placed in an official file. However, there is no evidence to show that the letters of complaint were false or erroneous. Absent evidence of error or abuse of discretion, an employee's dislike for a supervisory or management action is not compensable.³⁴ Thus, appellant has not established a compensable factor in this regard.

Appellant further alleged that the employing establishment failed to accommodate his left shoulder injury and provide a safer, lighter vehicle for his use. In his August 30, 2016 statement, Supervisor J.R. stated that accommodations were made in August 2016, but no probative evidence of error or abuse by the employing establishment was presented.³⁵ There is no evidence that the employing establishment committed error or abuse in accommodating appellant. Thus, appellant has not established a compensable employment factor.

Appellant also alleged that he was improperly denied overtime work and sick pay. However, he did not submit any corroborating evidence to support that this occurred as alleged.³⁶ With regard to pay issues, Postmaster C.S. indicated that appellant had not received pay for numerous days since March 2015 as he failed to maintain attendance requirements and failed to provide proper documentation to substantiate his absences. She indicated that his failure to follow attendance requirements and submit proper documentation led to being AWOL. Appellant also did not receive FMLA leave protection as he did not follow the proper procedures to qualify for FMLA protection. Thus, he has not established error or abuse. Appellant has alleged that he was improperly referred for a FFD examination with a psychologist. However, statements by Postmaster C.S. and appellant's supervisor indicated, and the record supports, that appellant had a history of misconduct and disciplinary action. The employing establishment thus sufficiently demonstrated that they acted appropriately in their administrative capacity with regard to referring appellant for a FFD examination with a psychologist.³⁷ Thus, appellant has not established a compensable employment factor.

Appellant additionally contended that he experienced harassment and discrimination by the employing establishment. He alleged that Postmasters C.S. and M.L as well as supervisors used racist management practices and falsely accused him of misconduct, including violent behavior. Appellant has not received a favorable decision from the EEOC regarding his allegations of intimidation and harassment. While he testified that Postmaster C.S. was reassigned after she issued her August 2016 apology to employing establishment employees, he also testified that the apology did not apply to him. As noted, harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can

³⁴ See *Frank B. Gwodz*, *supra* note 29.

³⁵ See *C.V.*, Docket No. 16-0699 (issued November 4, 2016).

³⁶ See *D.F.*, Docket No. 17-0970 (issued February 26, 2018).

³⁷ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. See generally *Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993).

constitute a compensable work factor.³⁸ Appellant, however, failed to substantiate his allegations of harassment and discrimination with probative and reliable evidence.³⁹ Thus, there is no basis to establish that he was subjected to disparate treatment by the employing establishment.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.⁴⁰

On appeal, appellant asserts that the medical evidence supports that he was injured and permanently damaged. He alleged that this resulted in lost overtime wages, vacation time, and sick leave. Since appellant has not established a compensable work factor, the claim is not established and the Board will not address the medical evidence.⁴¹

Appellant contends on appeal that he did not receive back pay for the proven false charges and that he had to borrow money to keep afloat. However, for the reasons set forth above, he has not established a compensable employment factor.

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

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴² OWCP's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(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."⁴³ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁴⁴

³⁸ *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

³⁹ *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, *supra* note 17.

⁴⁰ *A.K.*, 58 ECAB 119 (2006).

⁴¹ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴² 5 U.S.C. § 8128(a) (providing that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).

⁴³ 20 C.F.R. § 10.606(b)(3).

⁴⁴ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS -- ISSUE 2

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).

The underlying issue on reconsideration is factual in nature, *i.e.*, whether appellant has established compensable factors of his federal employment. On reconsideration he alleged that the May 10, 2017 hearing representative decision was based on lies and that the hearing representative was covering up for the employing establishment. However, 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. He made a general statement, expressing his own opinion, as to outcome of his case without discussing a point of law or advancing a relevant legal argument regarding a compensable work factor in this case. The Board, therefore, finds that 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, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board also finds that appellant did not submit any relevant and pertinent new evidence with his request for reconsideration to support his allegations. Appellant submitted a duplicate copy of a May 11, 2016 challenge letter. However, duplicative evidence does not constitute relevant and pertinent new evidence, and does not constitute a basis for reopening a case.⁴⁵ Therefore, appellant did not submit any relevant and pertinent new evidence which would require a merit review.

The Board 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 submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly declined to review the merits of the claim.

CONCLUSION

The Board finds that appellant has not established an emotional condition in the performance of duty, as alleged. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁴⁵ See *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the August 15 and May 10, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 18, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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