

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

A.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tukwila, WA, Employer**

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**Docket No. 18-1154
Issued: January 17, 2019**

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 May 14, 2018 appellant filed a timely appeal from a November 21, 2017 merit decision and a February 13, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a parasitic infection in the performance of duty, as alleged; 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 May 8, 2017 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he had parasites in his body as a result of being poisoned during the course of his federal employment. He claimed that someone put something in his food while he was undergoing therapy for his previously accepted November 23, 2015 employment-related injury.³ Appellant noted that he had filed an Equal Employment Opportunity (EEO) complaint against the employing establishment claiming that it intentionally caused these injuries. He first became aware of his claimed condition on August 12, 2016 and realized its relationship to his federal employment on October 12, 2016. Appellant stopped work on July 3, 2016. He was separated from the employing establishment, effective February 8, 2017.

OWCP, by development letter dated May 16, 2017, advised appellant that it required additional factual and medical evidence to determine whether he was eligible for FECA benefits. It noted that the evidence submitted was insufficient to support his claim. OWCP attached a questionnaire, asking appellant to provide a detailed description of the employment-related conditions or incidents he believed contributed to his illness, identify the exact medical condition/injury he was claiming as a result of employment factors, relevant dates, locations, coworkers, supervisors, and required duties, and provide witness statements. It afforded appellant 30 days to submit the requested information.

In a separate development letter dated May 16, 2017, OWCP requested that the employing establishment respond to appellant's allegations.

OWCP received a March 22, 2017 letter from appellant to the Washington Department of Social and Health Services which addressed his application for disability due to poisoning.

In patient plans dated March 24 and April 18 and 21, May 2, 2017, Dr. Dinelle M. Pineda, an attending Board-certified family medicine physician, diagnosed paresthesias, uncontrolled Type II diabetes mellitus without complication, an unspecified type of hypothyroidism, delusional disorder, and skin complaints. In the April 21 and May 2, 2017 patient plans, Dr. Pineda found no signs of parasite infection under appellant's skin or in his body.

By letter dated May 17, 2017, appellant responded to OWCP's development letter. He related that, while he was undergoing physical therapy for his accepted November 23, 2015 employment injuries, strange things occurred. A receptionist who worked at U.S. Health Works where appellant received physical therapy questioned him about where he went after his

³ Appellant had a prior occupational disease claim which OWCP accepted for unspecified sprain of the left shoulder joint and adhesive capsulitis of the left shoulder, with a November 23, 2015 date of injury, assigned OWCP File No. xxxxxx160.

appointments. After appellant responded that he went to restaurants, he became suspicious when she continued to ask him where he was going after his appointment. In February 2016 he was under a lot of pressure at work because he had sustained a third work injury which he claimed was intentionally caused by the employing establishment. In May or June 2016 appellant noticed spots on his skin. He related that he was careful about what he ate and what people gave him to eat at work. Appellant could not believe that someone would contaminate his food or beverage. However, after talking with several professionals in the health industry he claimed he realized that his current condition most likely happened at work, but because he worked for a federal employer, the food contamination could have happened anywhere during the period April through June 2016. Appellant believed that his therapy had ended at U.S. Health Works because someone had successfully contaminated him. He received clues about his claimed condition from management who forced him to sign a document that reduced his work hours. In addition, appellant claimed he was encouraged by a coworker on three occasions to see a physician after he was placed on off-duty status on July 3, 2016. In October 2016 he felt something moving in his lower back. Appellant's back condition worsened and he sought medical treatment on February 8, 2017. He described the subsequent medical treatment he received.

Appellant submitted a May 7, 2017 letter in which he related that he reported his problem to the police on April 20, 2017 and claimed that his behavioral counseling therapists were trying to create fake information for his workers' compensation claim. He also submitted documents related to his EEO complaint against the employing establishment. A June 5, 2017 document contained appellant's disability information for filing an application for social security and workers' compensation benefits.

By decision dated June 15, 2017, OWCP denied appellant's claim, finding that he had not established the factual portion of his claim as he had not specifically identified the employment factors he believed caused or contributed to his condition. It noted that he vaguely stated that he was poisoned and that something was put in his food, which caused parasites to enter his body. OWCP also noted that appellant did not specifically respond to the May 16, 2017 development questionnaire. It further noted that he failed to submit sufficient medical evidence to establish a diagnosed medical condition causally related to the work injury or event.

In a June 19, 2017 statement, appellant claimed that parasites were eating his shoulder joints and moving around both feet and up his right lower leg and under his skin.

In an appeal request form postmarked July 1, 2017 and received by OWCP on July 6, 2017, and in a letter received by OWCP on July 10, 2017, appellant requested a review of the written record before an OWCP hearing representative regarding the June 15, 2017 decision.

OWCP received a May 23, 2017 report from a certified physician assistant who diagnosed left shoulder strain, initial encounter. On June 13, 2017 the physician assistant diagnosed delusions of parasitosis and referred appellant to an internal medical physician.

In a July 26, 2017 statement, appellant again claimed that parasites were coming out of his joints, and both shoulders and hip areas several times a week.

By decision dated November 21, 2017, an OWCP hearing representative affirmed the June 15, 2017 decision. She found that appellant failed to submit sufficient factual evidence to establish factors of his federal employment, which he believed caused or contributed to his claimed medical condition.

OWCP received a previously submitted copy of a July 1, 2016 job offer (full-time, modified duty) from the employing establishment which appellant accepted on July 1, 2016, and August 25, 2017 letter from the Social Security Administration (SSA) which indicated that appellant was entitled to monthly disability benefits beginning in January 2017.

OWCP also received documents dated September 20 and December 8, 2017 regarding appellant's response to motions and the production of documents related to his EEO complaint against the employing establishment alleging that he was intentionally infected during his last blood extraction at U.S. Health Works in March, April, or May 2016, and that the employing establishment discriminated and retaliated against him, and created a hostile work environment.

Appellant, in letters received by OWCP on January 19, 2018, requested reconsideration of the November 21, 2017 decision.

Appellant submitted correspondence dated April 30, July 3 and 20, and August 23, 2016 alleging that he was sexually discriminated against, overworked, and wrongly removed from work due to unacceptable conduct and escorted from the building by security on the basis that he was not scheduled to work by the employing establishment.

By decision dated February 13, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was irrelevant or immaterial and insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ S.P., 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a parasitic infection causally related to factors of his federal employment.

Appellant's claim form generally stated that he had parasites in his body as a result of being poisoned during the course of his federal employment. However, he did not present a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to the presence or occurrence of his claimed medical condition, nor has he explained how those work factors caused or aggravated his claimed condition.

On May 16, 2017 OWCP informed appellant that the evidence received was insufficient to establish that he experienced any employment factors that were alleged to have caused an injury. It asked him to provide a detailed description of the employment-related activities he believed contributed to his condition and relevant dates, locations, coworkers, supervisors, and required duties. OWCP received a May 17, 2017 letter from appellant which attributed spots on his skin to the contamination of his food or beverage by the employing establishment. Appellant maintained that the employing establishment was responsible for his condition because he had sustained a third work injury, which he claimed was intentionally caused by the employing establishment. Additionally, he noted that management forced him to sign a document that reduced his work hours. Further, appellant noted that his coworker encouraged him on three occasions to seek medical treatment even though he had been placed on off-duty status. While he noted that he was careful about what he ate and what food people gave to him at work, appellant related that after talking to several health professionals he realized that his condition most likely occurred at work. In statements dated June 19 and July 26, 2017, he maintained that he had parasites in his bilateral shoulders and bilateral feet. However, appellant still did not clearly identify any specific work incidents as the cause of his claimed condition or explain how work incidents caused or aggravated his condition. The Board notes that he has further attributed his claimed condition to blood withdrawal by an employee at U.S. Health Works. As appellant did not provide a factual statement describing in detail how specific employment factors or events caused the claimed injury, he has not met his burden of proof.⁷

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

⁷ *S.J.*, Docket No. 17-1798 (issued February 23, 2018); *P.G.*, Docket No. 15-1345 (issued August 23, 2016).

As appellant has not established the factual component of his claim, the Board will not address the medical evidence with respect to causal relationship.⁸

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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁹ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).¹⁰ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain 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.¹¹ Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹²

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).

Appellant disagreed with OWCP's denial of his occupational disease claim for parasitic infection causally related to alleged factors of his federal employment. On January 19, 2018 he requested reconsideration. Appellant did not allege that OWCP erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by OWCP. Thus, the Board finds that he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered with his January 19, 2018 request for reconsideration. The underlying issue in this case involves fact of injury. Appellant failed to submit a narrative statement detailing the employment factors alleged to have caused his injury. Rather, he submitted additional

⁸ *Id.*; *B.G.*, Docket No. 16-1454 (issued November 22, 2016).

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.608(a).

¹¹ *Id.* at § 10.606(b)(3).

¹² *Id.* at § 10.608(b).

evidence from his EEO complaint that included documents and correspondence dated April 30, 2016 to December 8, 2017 related to alleged discriminatory, retaliatory, and hostile improper actions directed towards him by the employing establishment, and his medical treatment at U.S. Health Works. This evidence is not relevant to the fact of injury issue as it does not provide a detailed description of employment factors alleged to have caused or aggravated appellant's claimed parasitic infection condition. Therefore, these documents and correspondence do not constitute a basis for reopening his claim.¹³

Appellant resubmitted a copy of the employing establishment's July 1, 2016 job offer for a full-time, modified-duty position and an August 25, 2017 letter from SSA regarding his entitlement to monthly disability benefits. The Board notes that these documents were previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁴

The Board accordingly finds that appellant did not meet 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.¹⁵

CONCLUSION

The Board finds that appellant has not meet his burden of proof to establish a parasitic infection 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).

¹³ *D.T.*, Docket No. 07-2223 (issued March 5, 2008).

¹⁴ *See L.R.*, Docket No. 18-0400 (issued August 24, 2018).

¹⁵ *See A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2018 and November 21, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 17, 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