

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

_____	)	
<b>O.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0445</b>
	)	<b>Issued: July 24, 2019</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>McAllen, TX, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 20, 2018 appellant filed a timely appeal from a July 23, 2018 merit decision and a September 19, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 et seq.

<sup>2</sup> The Board notes appellant submitted additional 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 has 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 June 4, 2018 appellant, then a 54-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he sustained post-traumatic stress disorder (PTSD) due to a series of traumatic events, which caused unwanted nightmares, anxiety, depression, mood swings, irritability, hostility, hypervigilance, social isolations, insomnia, guilt, and emotional detachment. He indicated that he first became aware of his condition on August 30, 1996 and of its relationship to factors of his federal employment on January 1, 2000. On the reverse side of the claim form the employing establishment indicated that it was not aware that appellant had been suffering from his alleged emotional condition until he informed his supervisor on May 24, 2018.

In a development letter dated June 20, 2018, OWCP advised appellant that additional information was needed to establish his claim. Appellant was informed that he need to provide a detailed description of the employment-related activities he believed had caused or contributed to his condition, as well as rationalized medical opinion evidence establishing a diagnosis and causal relationship. OWCP also provided a questionnaire for his completion. Appellant was afforded 30 days to submit the necessary evidence.

In a statement dated July 1, 2018, appellant recounted a number of specific incidents, from 1995 through 2016, which he believed led to his alleged post-traumatic stress disorder. He indicated that he had witnessed violence, loss of life, injuries or deaths to coworkers, and injuries or deaths to illegal aliens throughout his federal employment career. Appellant noted that he suffered from paranoia, sadness, depression, anxiety, and guilt and he was reluctant to share his feelings with the employing establishment over the years for fear that it would question his ability to do his job.

By decision dated July 23, 2018, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a diagnosis of a condition in connection with his claim.

On September 7, 2018 appellant requested reconsideration of OWCP's July 23, 2018 decision. He did not submit any additional evidence along with his request.

By decision dated September 19, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

## LEGAL PRECEDENT -- ISSUE 1

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>3</sup> There are situations where an injury or an illness has some connection with the employment, but, nevertheless, does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</sup> On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

## 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.

It is appellant's burden to submit evidence containing a diagnosis in connection with his emotional condition claim. In its June 20, 2018 development letter, OWCP requested that he submit medical evidence containing a diagnosis from a qualified physician, and afforded him 30 days to do so. Appellant did not submit any medical evidence. The Board has explained that, without a medical diagnosis, an employee has not presented prima facie evidence of an emotional condition.<sup>7</sup> The Board accordingly finds that, as appellant has submitted no medical evidence diagnosing an emotional condition, he has failed to establish his emotional condition claim.<sup>8</sup>

---

<sup>3</sup> See *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>4</sup> See *S.K.*, *id.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> See *S.K.*, *id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *S.C.*, Docket No. 16-0293 (issued May 10, 2016); *M.M.*, Docket No. 09-1347 (issued December 18, 2009); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (finding that, as there was no medical evidence diagnosing an emotional condition, appellant failed to establish a prima facie claim).

<sup>8</sup> *Id.*

Without a medical diagnosis, appellant has not met his burden of proof to establish his emotional condition claim.<sup>9</sup>

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>10</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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>11</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>12</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>13</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>14</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).

---

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>11</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>12</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, Reconsiderations, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees Compensation System (iFECS). Chapter 2.1602.4b.

<sup>13</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>14</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

The underlying issue on reconsideration was medical in nature, *i.e.*, whether he established a medical diagnosis. Appellant has not established that OWCP erroneously applied or interpreted a specific point of law or advanced a new and relevant legal argument not previously considered. Thus, 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 has not submitted evidence with his request for reconsideration. Appellant, therefore, did not provide relevant and pertinent new evidence in support of reconsideration.<sup>15</sup> As such, he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>16</sup>

The Board accordingly finds that appellant failed to 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.<sup>17</sup>

### **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 his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>15</sup> *Supra* note 10.

<sup>16</sup> See 20 C.F.R. § 10.606(b)(3)(iii).

<sup>17</sup> *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *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 September 19 and July 23, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 24, 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