

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

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**M.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Broomfield, CO, Employer**

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**Docket No. 19-0498  
Issued: October 3, 2019**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 8, 2019 appellant filed a timely appeal from a November 20, 2018 merit decision and a December 10, 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>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on September 30, 2018, as alleged; and (2) whether OWCP

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<sup>1</sup> 5 U.S.C. § 8101 et seq.

<sup>2</sup> The Board notes that, following the December 10, 2018 decision, OWCP received additional evidence. 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.*

properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On October 9, 2018 appellant, then a 56-year-old PSE mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance duty on September 30, 2018, she sustained a mental breakdown, severe headache, and anxiety as a result of her coworker deriding her ability to perform her employment duties. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on October 1, 2018.

In a development letter dated October 11, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the factual and medical evidence needed to establish her claim and provided a questionnaire for her completion which contained specific questions about the alleged employment incident, whether she filed an administrative complaint, and her mental health history. OWCP afforded appellant 30 days to submit the necessary evidence.

In a separate development letter of the same date, OWCP notified the employing establishment of appellant's claim and requested comments from a knowledgeable supervisor regarding the accuracy of her statement. It requested submission of the requested evidence within 30 days.

In a letter dated October 17, 2018, the employing establishment controverted appellant's claim. It noted that the alleged incident did not meet FECA guidelines to be classified as a traumatic injury in the performance of her duties. The employing establishment indicated that appellant's supervisor instructed her to not scan parcels and undeliverable bulk business mail until her area was cleared and set up. It related that appellant put down a parcel and left her station, returned a few minutes later, and stated that she was leaving because she had a headache. The employing establishment noted that appellant claimed that her supervisor was discriminating against her. It indicated that she made several vague allegations, but had not provided probative factual evidence to demonstrate the occurrence of her alleged events.

In a letter dated October 5, 2018, received by OWCP on November 8, 2018, the employing establishment related that it had performed an investigative interview with appellant.

In a letter dated October 22, 2018, Dr. Jae Lee, an osteopath, indicated that appellant had a fainting episode at work on August 6, 2018 because the air conditioning was not working at her workplace. She noted that appellant complained of a headache and dizziness, and diagnosed post-concussive syndrome related to her fainting at work.

By decision dated November 20, 2018, OWCP denied appellant's claim, finding that she had not submitted evidence sufficient to establish that the events alleged occurred in the performance of duty as she described. It also found that she had not submitted medical evidence containing a diagnosis in connection with the alleged incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 30, 2018 appellant requested reconsideration of OWCP's November 20, 2018 decision.

In support of her request appellant submitted an x-ray report dated October 11, 2018 by Dr. Brendan F. Essary, a diagnostic radiologist, who indicated that she complained of chest pain and shortness of breath. He noted an impression of no radiographic evidence for acute cardiopulmonary disease.

By decision dated December 10, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim.

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

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>6</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.<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> 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>9</sup> On the other hand, the disability

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *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> *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

<sup>8</sup> *See L.H.*, *supra* note 7; *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>9</sup> *See S.K.*, *supra* note 6; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

is not covered when 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>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on September 30, 2018, as alleged.

The only explanation that appellant provided pertaining to her alleged traumatic incident was the limited statement noted in her Form CA-1 where she alleged that a coworker derided her ability to perform her employment duties. By failing to sufficiently describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that a traumatic injury occurred at the time, place, and in the manner alleged.<sup>11</sup> In an October 11, 2018 development letter, OWCP advised her of the type of factual information needed to establish her claim. An attached questionnaire included questions regarding the alleged traumatic event itself and inquired into her mental health history. Appellant did not respond to OWCP's request for additional factual information.<sup>12</sup> Accordingly, the Board finds that she has not met her burden of proof.<sup>13</sup>

As appellant has not established the factual element of her claim, the Board need not address whether the medical evidence of record is sufficient to establish a diagnosed medical condition causally related to the employment incident, as alleged.<sup>14</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**

To be entitled to a merit review under FECA section 8128(a) of an OWCP decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.<sup>15</sup> OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute

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<sup>10</sup> See *S.K., id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>11</sup> *Id.*

<sup>12</sup> *K.S.*, Docket No. 17-2001 (issued March 9, 2018); see also *K.W.*, Docket No. 16-1656 (issued December 15, 2016).

<sup>13</sup> See *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).

<sup>14</sup> See *R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>15</sup> See *H.H.*, Docket No. 18-1660 (issued March 14, 2019).

relevant and pertinent new evidence not previously considered by OWCP.<sup>16</sup> Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>17</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, she 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).

On reconsideration appellant provided a diagnostic report, which related normal cardiopulmonary findings. The underlying issue in the case was whether appellant had established that the September 30, 2018 employment incident occurred at the time, place, and in the manner alleged. As noted, the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a claim.<sup>18</sup> The Board finds that the October 11, 2018 x-ray report, which is the only evidence submitted in support of her request for reconsideration, is irrelevant to the underlying issue as it does not address whether the September 30, 2018 employment incident occurred at the time, place, and in the manner alleged. Thus, appellant is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).

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 her burden of proof to establish an emotional condition in the performance of duty on September 30, 2018, as alleged. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>16</sup> *M.K.*, *supra* note 5; *D.K.*, 59 ECAB 141 (2007).

<sup>17</sup> *M.K.*, *id.*; *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *K.H.*, 59 ECAB 495 (2008).

<sup>18</sup> *M.E.*, Docket No. 18-0553 (issued November 5, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10 and November 20, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2019  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board