

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

J.M., Appellant)	
)	
and)	Docket No. 19-0252
)	Issued: January 8, 2020
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Royal, AR, Employer)	

Appearances:

Sara Kincaid, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 23, 2018 appellant, through counsel, filed a timely appeal from a May 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The most recent merit decision was a Board decision dated January 12, 2017, which became final 30 days after

¹ 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.

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from May 1, 2018, the date of OWCP's last decision, was October 28, 2018. Because using October 31, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 23, 2018, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

issuance, and is not subject to further review.³ As there is no merit decision issued by OWCP within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is 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

As noted, this case has previously been before the Board.⁵ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 5, 2014 appellant, then a 37-year-old recreation specialist supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition as a result of factors of his federal employment due to acts of management including changing his work duties without notice, denying reasonable accommodations, verbal abuse, and failure to provide proper instructions. He first became aware of his condition and realized that it was causally related to factors of his federal employment on March 5, 2013. Appellant stopped work on March 1, 2014.

Dr. B. Cody Wright, a Board-certified psychiatrist, began treating appellant on November 27, 2013. He noted a prior history of generalized anxiety disorder. Additional diagnoses included adjustment disorder with depressed mood and obsessive compulsive personality disorder. In a May 15, 2014 report, Dr. Cody indicated that appellant's adjustment disorder with depressed mood was caused by work-related stress. He also indicated that recent exacerbations of appellant's generalized anxiety disorder were due in part to work-related stress.

Appellant has alleged that K.D., a supervisor, and C.R., the center director, harassed and discriminated against him because of his service-connected psychological disabilities. He alleged that K.D. demanded that he accept responsibilities for which he had not been hired and which created an extremely stressful situation for him. Appellant indicated that he was not part of management and had never been consulted when he was temporarily assigned as a duty officer, which was a major increase in responsibility. He asserted that the employing establishment had not appropriately compensated him for duty officer and shift supervisor duties which he claimed were above his grade level. Appellant also alleged that K.D. verbally berated him and that C.R. verbally threatened him. He asserted that the employing establishment failed to provide him

³ 20 C.F.R. § 501.6(d); *see G.G.*, Docket No. 18-1074 (issued January 7, 2019).

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ Docket No. 16-0717 (issued January 12, 2017).

reasonable accommodations. Finally, appellant alleged that the employing establishment management team had not appropriately addressed his concerns about workplace harassment.

On April 28, 2014 C.R. submitted a job description for a recreation specialist, GS-09, which noted responsibilities of management and supervision of less than 25 percent and administration of recreation programs and services of 50 percent. The description noted that the position required working nonstandard tours of duty, weekends, and holidays and might require overtime on a regular and recurring basis.

Appellant indicated that he filed an Equal Employment Opportunity complaint. He also submitted timesheets.

By decision dated September 10, 2014, OWCP denied appellant's claim finding that the evidence of record did not establish an emotional condition that "arose during the course of employment and within the scope of compensable work factors" as defined by FECA.

On November 8, 2014 appellant requested reconsideration.

By decision dated April 13, 2015, OWCP denied modification of the September 10, 2014 decision.

On July 28, 2015 appellant, through counsel, requested reconsideration. Appellant submitted a July 10, 2014 declaration which detailed allegations of discrimination and harassment. Also submitted was a complainant's November 13, 2014 affidavit and a December 2, 2014 rebuttal affidavit, which described alleged incidents of harassment and discrimination by management.

By decision dated January 8, 2016, OWCP denied modification of the April 13, 2015 decision.

On February 29, 2016 appellant appealed to the Board. By decision dated January 12, 2017, the Board affirmed OWCP's January 8, 2016 decision. The Board found that the evidence of record failed to establish that appellant was harassed or discriminated against by K.D. and C.R. because of his service-connected mental disabilities or that he was verbally berated or threatened. The Board found no error or abuse with regard to administrative matters including that appellant was forced to accept responsibilities for which he was not hired, that he was not appropriately compensated for performing duty officer and shift supervisor duties, that he had been denied reasonable accommodations, and that the employing establishment failed to address his concerns about workplace harassment.

On January 10, 2018 appellant, through counsel, requested reconsideration. Appellant resubmitted Dr. Wright's May 15, 2014 report, as well as time and attendance records from 2012 to 2014, which were also previously of record. He also submitted a statement dated January 9, 2018 describing his work duties as a recreational specialist and asserted that performing his regular and specially assigned duties with the excessive workload caused him stress.

Counsel asserted that the new factual evidence was sufficient to establish that appellant had sustained an emotional condition in the performance of duty. She reiterated that appellant's

regular and specially assigned duties detailed in the January 9, 2018 statement caused his emotional condition.

By decision dated May 1, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

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.⁶

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.⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ 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.¹⁰

ANALYSIS

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).

In his request for reconsideration, appellant did not show that OWCP had erroneously applied or interpreted a specific point of law. In the January 19, 2018 request for reconsideration, counsel asserted that new factual evidence from him in the form of an updated January 9, 2018 statement was sufficient to establish that he sustained an emotional condition in the performance

⁶ 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).

⁷ 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).

⁸ *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 the merit 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). *Id.* at Chapter 2.1602.4b.

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

of duty. These assertions, however, do not establish a legal error by OWCP nor does it provide a new and relevant legal argument. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant submitted a January 9, 2018 statement describing his work duties as a recreational specialist and asserted, in great detail, that performing his regular and specially assigned duties with the excessive workload caused him stress. However, this evidence is duplicative of evidence previously submitted and considered by OWCP in its prior merit decisions. Accordingly, it is not enough to merely repeat the allegations in a new statement on reconsideration without providing relevant and pertinent new evidence to substantiate his claim, for instance new witness statements or documentation supporting his claims in his statement. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

Similarly, appellant resubmitted time and attendance records, as well as Dr. Wright's May 15, 2014 report. However, despite counsel's assertions to the contrary, this evidence is duplicative of evidence previously submitted and considered by OWCP in its earlier merit decisions.¹² Therefore, he is not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

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

¹¹ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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