

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish 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 his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 21, 2009 appellant, then a 32-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that management subjected him to stress due to their discriminatory and retaliatory actions, thereby causing anxiety; insomnia; chest pain; severe aches of the head, neck, and back of the eyes; muscle tension of the neck, shoulders, and back; and fatigue of the entire body. He noted that he first became aware of his claimed conditions on August 15, 2009 and first realized their relation to his federal employment on August 25, 2009. Appellant stopped work on August 18, 2009. On the reverse side of the Form CA-2, appellant's immediate supervisor indicated that appellant had not transferred from his position in Cleveland, Ohio, and reported to a new position in Lexington, Kentucky.

In an accompanying statement, appellant claimed that on August 15, 2009 management improperly took away his work badge and threatened him with placement in absent without leave (AWOL) status and termination if he did not report to a new position in Lexington, Kentucky, despite the fact that he had not been given proper notice of the reassignment. He asserted that management did not provide him with the same counseling/training, information, housing instructions, and moving expenses as the other reassigned employees and failed to provide him the option of changing work crafts in order to avoid reassignment. Appellant alleged that the employing establishment also did not give him the same opportunity as his coworkers to attend meetings regarding the relocation process and neglected to pay him 80 hours of administrative leave for time spent on relocation. In addition, he asserted that management only provided relocation forms 24 hours prior to the deadline for reporting to the Lexington, Kentucky job and refused his requests for assistance in filling out the forms. Appellant maintained that the employing establishment discriminated against him due to race, gender, and the fact that he previously filed a complaint. He asserted that, in August 2009, he placed bids on several vacant positions for which he was qualified (including a clerk position), but that his bids were unreasonably denied. Appellant indicated that his coworkers were awarded their bids and that the employing establishment did not respond to his numerous inquiries regarding his failed bids.

³ Docket No. 13-0527 (issued May 13, 2013), *petition for recon. denied*, Docket No. 13-0527 (issued March 6, 2014); Docket No. 15-0523 (issued November 6, 2015), *petition for recon. denied*, Docket No. 15-0523 (issued February 1, 2017).

Appellant submitted an October 7, 2009 attending physician's report (Form CA-20), from Dr. James F. Cunagin, a Board-certified psychiatrist, who diagnosed adjustment disorder with mixed depression and anxiety.

In an October 16, 2009 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. In a development letter of even date, it requested additional evidence from the employing establishment. OWCP provided both parties 30 days to respond.

In response, the employing establishment submitted an October 16, 2009 letter, in which it controverted appellant's claim and asserted that it did not commit error or abuse with respect to an administrative function when it directed him to report to his new work assignment in Lexington, Kentucky by August 30, 2009. It advised that he had not yet reported to the new work assignment. The employing establishment also submitted an October 2, 2009 letter, in which it provided a chronology of events regarding the reassignment action.

In statements received by OWCP on November 3 and 10, 2009, appellant repeated a number of his prior assertions regarding the cause of his stress-related conditions. He also alleged that the employing establishment wrongly failed to pay him for the 8.75 hours he worked on August 15, 2009, and to provide him with 30 days of housing expenses related to the relocation to Lexington, Kentucky. Appellant advanced similar arguments in a statement dated November 27, 2009.

Appellant submitted numerous documents, sent between himself and employing establishment officials, which mostly related to the circumstances of his relocation in August 2009 and the bidding process for several job vacancies. These documents included: a May 1, 2009 letter, providing 60 days advance notice of possible involuntary reassignment of appellant's job; letters dated July 2 through 18, 2009, regarding posted job openings; a July 14, 2009 notice of involuntary reassignment, effective August 15, 2009; e-mails dated August 15 through 27, 2009 concerning the need to report to the new job location by August 30, 2009; an August 26, 2009 e-mail regarding a request for reassignment; September 10 and 16, 2009 e-mails, concerning job bids; an October 14, 2009 letter, concerning a pre-disciplinary interview related to attendance issues; multiple leave slips from the latter half of 2009; excerpts from a 2001 employing establishment handbook; and undated lists of coworkers selected for job vacancies. Appellant also submitted documents relating to an Equal Employment Opportunity (EEO) claim he had filed on October 8, 2009 with respect to some of these matters. He submitted additional medical evidence in support of his claim, including a September 18, 2009 report from Dr. Cunagin and an October 19, 2009 report from Dr. Alexa R. Raymond, a Board-certified family practitioner.

By decision dated February 26, 2010, OWCP denied appellant's claim for an emotional condition, finding that he had not established a compensable work factor. It determined that he had not submitted sufficient evidence to demonstrate that management committed error or abuse with respect to administrative matters or that management subjected him to harassment and discrimination.

On October 15, 2012 appellant requested reconsideration of the February 26, 2010 decision. He continued to argue that management committed error and abuse with respect to the

August 2009 relocation and his rejected bids for job vacancies. Appellant alleged that, around the time of the August 2009 relocation, he should have been allowed to become a part-time regular or part-time flexible carrier at the Cleveland, Ohio workplace.

In support of his reconsideration request, appellant submitted numerous documents related to his EEO claim, dated from January 5 through August 13, 2010. He submitted e-mails and letters, dated from May 29, 2009 through January 13, 2010, which contained discussions of his August 2009 relocation and bidding for job vacancies. Appellant also submitted a settlement agreement for a grievance he filed against the employing establishment, which was signed on September 18, 2009. The document provided that it was mutually agreed that all employees would be treated with dignity and respect, and that appellant would receive the same consideration as that received by his coworkers who were relocated to Lexington, Kentucky. It was noted that appellant had not been placed on AWOL status, and that, by virtue of the full and final settlement agreement, appellant's union was withdrawing the case from the grievance procedure. Both parties agreed that the settlement was nonprecedent setting and would not be cited by either party in any subsequent grievance or arbitration hearing.

By decision dated January 2, 2013, OWCP denied appellant's reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant appealed to the Board and, by decision dated May 13, 2013,⁴ the Board found that OWCP had properly determined, in its January 2, 2013 decision, that appellant had filed an untimely request for reconsideration of OWCP's February 26, 2010 decision. However, the Board further found that OWCP had not presented adequate facts and findings, in its January 2, 2013 decision, supporting that appellant failed to demonstrate clear evidence of error in the February 26, 2010 decision. The Board remanded the case to OWCP and directed it to issue a decision, which contained adequate facts and findings regarding whether appellant had demonstrated clear evidence of error.⁵

Appellant submitted additional EEO documents dated May 3, 2010, excerpts from a 2007 union manual and a 2010 collective bargaining agreement, a motion appellant filed in U.S. District Court on August 29, 2009, travel receipts from August 2009, a November 18, 2009 notice of removal, and other documents concerning the August 2009 job relocation and bidding for job vacancies.

By decision dated September 26, 2014, OWCP denied appellant's October 15, 2012 request for reconsideration, finding that his October 15, 2012 reconsideration request was untimely filed and failed to demonstrate clear evidence of error.

⁴ *Supra* note 3.

⁵ Appellant filed a petition for reconsideration of the Board's May 13, 2013 decision, but the Board denied the petition by order dated March 6, 2014. *Supra* note 3.

Appellant submitted additional EEO materials dated January 29, 2010 to March 23, 2015, and arbitration decisions from 2003 and 2009 concerning grievances filed by other individuals regarding a period of denied leave and a termination action, respectively.

Appellant appealed the September 26, 2014 decision to the Board and, by decision dated November 6, 2015,⁶ the Board affirmed the September 26, 2014 decision.

On February 27, 2017 OWCP received a Form CA-2, which appellant had completed on November 2, 2009. Appellant alleged that management subjected him to additional discriminatory and retaliatory actions, including refusing to return him to work and/or to give him a return to work date, thereby causing stress, anxiety, and various physical ailments. He asserted that he first became aware of his claimed conditions on October 30, 2009, and first realized their relation to his federal employment on November 1, 2009. In March 17 and April 1, 2017 letters, appellant argued that the filing of a Form CA-2 on November 2, 2009 required the establishment of a new claim separate from the claim initiated by his filing of the Form CA-2 on September 21, 2009.

On June 10, 2017 appellant requested reconsideration of the denial of his claim. In an accompanying statement, he argued that management improperly refused to return him back to work. Appellant also argued that the employing establishment wrongly issued him a notice of removal and failed to conduct a pre-disciplinary interview.

In support of his reconsideration request, appellant submitted excerpts from December 1995 and November 2009 employing establishment manuals and a 2010 Office of Personnel Management (OPM) manual, a February 17, 2010 letter from a union official regarding required notice for reassignment actions, a blank assignment order form (PS Form 1723), and arbitration decisions from 1987 and 2000 concerning grievances filed by other individuals regarding delays in their return to work and their right to wear a button at work, respectively. He also submitted a November 17, 2012 arbitration decision, regarding a grievance of a 2008 announcement of the need to reassign up to 110 employees from a postal installation in Oakland, CA. The arbitrator found that the agency violated a collective bargaining agreement when it reassigned approximately 38 employees in 2009 without giving notice of the place of reassignment 60 days in advance.

In an April 17, 2018 letter, appellant argued that the employing establishment erred by not placing him in a residual job vacancy in his Cleveland, Ohio workplace, which had been vacant since February 27, 2009. He asserted that this argument was supported by a September 25, 2015 arbitration decision. Appellant attached a copy of that decision which involved a postal carrier who was involuntarily reassigned from one location to another within New Jersey. The arbitrator found that the postal worker was entitled to be returned to a residual vacancy at his original location.

By decision dated November 8, 2018, OWCP denied appellant's claim for an emotional condition, finding that he had not established a compensable employment factor. It determined that the arbitration decisions submitted by him did not establish error or abuse by the employing establishment. OWCP noted that its handling of the Form CA-2 appellant filed on November 2,

⁶ *Id.*

2009 did not constitute a compensable employment factor because it is unrelated to the present claim, *i.e.*, the claim initiated by the Form CA-2 filed on September 21, 2009.

On December 10, 2018 appellant requested reconsideration of the November 8, 2018 decision. In an accompanying statement, he asserted that he had to work in a hostile work environment and that management subjected him to threats, discrimination, and retaliation. Appellant argued that, in August 2009, the employing establishment improperly directed him to relocate from Cleveland, Ohio to a new job in Lexington, Kentucky. He asserted that management wrongly threatened to fire him if he did not hurry and finish his work in Cleveland, Ohio, and then report for duty in Lexington, Kentucky by August 30, 2009. Appellant indicated that the employing establishment provided him printed materials regarding the relocation, but failed to provide adequate training and counseling to help him carry out the relocation process and perform the new job in Lexington, Kentucky. He asserted that management failed to advise him of a July 22, 2009 meeting, concerning the relocation process. Appellant alleged that, on August 15, 2009, management improperly took his work badge away and prevented him from using the employee assistance program. On the same date, management gave him a personnel form, which failed to indicate approval of 80 hours of leave for the time he spent relocating his workspace. Appellant asserted that management refused to issue another work badge, which would allow him to access his new secure workplace in Lexington, Kentucky. He believed that the employing establishment violated a September 18, 2009 settlement agreement, by not providing him the same rights as other relocated employees with respect to timely instructions, training, counseling, and the ability to become a part-time flexible employee. In addition, appellant argued that a November 17, 2012 arbitration decision, demonstrated that the employing establishment erred by failing to provide him notice 60 days before the date of the job relocation action.

Appellant also indicated that, on approximately August 19, 2009, the employing establishment advised him that it would change his work schedule from a night shift (4:00 p.m. to 12:30 a.m.) to a day shift (10:30 p.m. to 7:00 a.m.). He contended that the employing establishment committed error and abuse by not giving him adequate notice of this upcoming change. Appellant also alleged stress due to the employing establishment's "tampering" with his 8.75 hours of work time for August 15, 2009 and due to "relocation pay that was deleted." He asserted that management mishandled a Form CA-2 he filed on November 2, 2009. Appellant maintained that management improperly did not pick him to fill several job vacancies and failed to consider the effect of a September 21, 2015 arbitrator's decision on the hiring process. He alleged that the September 21, 2015 decision, showed that he should have been allowed to fill a residual vacancy position, which had been vacant at his original work installation since February 27, 2009. Appellant also asserted that problems with the automated mail processing equipment, including jamming and failure of bins/stackers to fill, made it hard to meet production goals and thereby caused or aggravated his claimed stress-related condition.

Appellant also submitted several documents in support of his reconsideration request, including a December 8, 1976 grievance decision, concerning the relocation of postal employees (from a postal facility in Omaha, Nebraska, to a postal facility in Des Moines, Iowa), a March 20, 1998 letter, from an employing establishment official regarding compliance by postal managers with arbitration awards and grievance settlements, and excerpts from a 2013 union publication concerning the enforcement of collective bargaining agreements.

By decision dated January 17, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ 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.⁹

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.¹⁰

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.¹¹ 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.¹²

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 employment factors.¹³ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely

⁷ 5 U.S.C. § 8101 *et seq.*

⁸ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ 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).

¹⁰ *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).

¹¹ *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹³ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁴

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.¹⁵ If a claimant does implicate a factor of employment, it should then determine whether the evidence of record substantiates that factor. 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.¹⁶

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 as alleged.

Appellant alleged that he sustained an emotional condition due to various incidents and conditions at work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.¹⁷ Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters. He also claimed that management subjected him to harassment and discrimination.

With respect to administrative or personnel matters, appellant claimed that management officials improperly attempted to relocate his job from Cleveland, Ohio, to Lexington, Kentucky, and wrongly threatened to terminate his employment over the matter. He asserted that management did not provide him with same counseling/training, information, housing instructions, and moving expenses as the other reassigned employees and failed to provide him the option of working as a part-time flexible or regular mail carrier in order to avoid reassignment. Appellant alleged that the employing establishment neglected to pay him 80 hours of administrative leave for time spent on relocation and for 8.75 hours he worked on August 15, 2009, failed to give him relocation forms in a timely manner, and refused his requests for assistance in filling out such forms. He asserted that in August 2009 he placed bids on several vacant positions, which were unreasonably denied, and that the employing establishment did not respond to his numerous inquiries regarding his failed bids. Appellant also alleged managerial wrongdoing with

¹⁴ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁵ *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁶ *Id.*

¹⁷ *See Lillian Cutler*, *supra* note 11.

respect to its handling of work badges, a Form CA-2 he filed on November 2, 2009, and disciplinary matters, including the issuance of a notice of removal on November 18, 2009.

The Board has held that 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.¹⁸ However, the Board has also 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.¹⁹ 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.²⁰

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted allegations regarding administrative/personnel matters. Appellant submitted e-mails, letters, and other documents, which concerned some of these administrative/personnel matters, but the evidence did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that he obtained a final determination from an administrative body showing that the employing establishment committed error or abuse. Appellant submitted numerous materials regarding an EEO complaint he filed in October 2009, but there is no final EEO decision in the case record showing that error and abuse actually occurred.²¹ The record contains a September 18, 2009 settlement agreement concerning a grievance appellant filed against the employing establishment. Although the agreement denotes that appellant would receive the same consideration as that received by his coworkers who were relocated to Lexington, Kentucky, it does not contain a finding of wrongdoing by the employing establishment. In fact, the agreement specifically indicated that it was nonprecedent setting. Appellant believed that November 17, 2012 and September 21, 2015 arbitration decisions he submitted to the case record established managerial error and abuse in the relocation and job bidding matters. However, these decisions would not establish his claims of wrongdoing because their findings pertain to the circumstances of individuals other than appellant.²² Although appellant expressed dissatisfaction with the actions of management, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²³ Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, he has not established a compensable employment factor with respect to administrative or personnel matters.

¹⁸ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *petition for recon. denied*, 42 ECAB 556 (1991).

¹⁹ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *William H. Fortner*, 49 ECAB 324 (1998).

²⁰ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

²¹ *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²² *See C.M.*, Docket No. 17-0027 (issued July 5, 2017).

²³ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

Appellant also alleged harassment and discrimination by management in that he generally alleged that management subjected him to a hostile work environment, and committed discriminatory and retaliatory actions with respect to the August 2009 relocation and the denial of several job bids. He maintained that the employing establishment discriminated against him due to race, gender, and the fact that he previously filed a complaint. To the extent that disputes and incidents alleged as constituting harassment and discrimination are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.²⁴ The Board has held that unfounded perceptions of harassment and discrimination do not constitute an employment factor.²⁵ Mere perceptions are not compensable under FECA and harassment or discrimination can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment or discrimination actually occurred.²⁶

Appellant, however, did not submit corroborative evidence in support of his allegations regarding harassment or discrimination. He did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²⁷ Appellant did not submit a complaint or grievance filed with respect to these matters, such as an EEO complaint or a grievance filed with the employing establishment, which contained a final finding of harassment or discrimination committed by the employing establishment. Therefore, he has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁸ Therefore, OWCP properly denied appellant's emotional condition claim.

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.

²⁴ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²⁵ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established a compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

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 or her own motion or on application.²⁹

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.³⁰

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³¹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.³² 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.³³

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record³⁴ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.³⁵

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).

²⁹ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

³⁰ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

³¹ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

³² 20 C.F.R. § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

³³ 20 C.F.R. § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³⁴ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

³⁵ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

On December 10, 2018 appellant filed a timely request for reconsideration of a November 8, 2018 decision.³⁶ The Board finds that he did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Appellant argued that various incidents and conditions at work constituted compensable employment factors. He alleged that, in August 2009, the employing establishment improperly directed him to relocate from Cleveland, Ohio, to a new job in Lexington, Kentucky, and wrongly threatened to fire him over the matter. Appellant believed that the employing establishment failed to provide adequate notice of the relocation action and should have let him hold a part-time flexible or regular carrier position in Cleveland, Ohio. Moreover, he maintained that he was unfairly denied his bids on several job vacancies in August 2009. Appellant alleged that the employing establishment failed to provide adequate training and counseling to help him carry out the relocation process and perform the new job in Lexington, Kentucky. He asserted that OWCP improperly failed to pay him for 8.75 hours worked on August 15, 2009 and denied his request for 80 hours related to time spent relocating. Appellant also alleged management wrongdoing with respect to its handling of matters relating to work badges, meetings on the relocation matter, and his filing of a Form CA-2 on November 2, 2009. He asserted that he had to work in a hostile work environment in which management subjected him to threats, discrimination, and retaliation. Appellant believed that his arguments regarding compensable employment factors were supported by a September 18, 2009 settlement agreement, as well as by November 17, 2012 and September 21, 2015 arbitrators' decisions. However, the Board finds that OWCP had previously considered and rejected all of these same arguments when it denied appellant's emotional condition claim on multiple prior occasions. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.³⁷

Appellant also implicated work duties as contributing to his claimed conditions³⁸ by asserting that problems with the automated mail processing equipment, including jamming and failure of bins/stackers to fill, made it hard to meet production goals and thereby caused or aggravated his claimed stress-related conditions. He further alleged that management committed error and abuse when it prevented him from using the employee assistance program on August 15, 2009, and advised him on approximately August 19, 2015, of an upcoming change in his workshift from a night shift to a day shift.

The Board finds, however, that these arguments are not relevant to the underlying factual issue of the present case, *i.e.*, whether appellant submitted probative factual evidence supporting the finding of a compensable employment factor. Appellant's argument with respect to malfunctioning equipment only constitutes a vague, unsupported allegation regarding work duties/conditions. He did not provide any details of how often the equipment malfunctioned or present evidence documenting the extent of such malfunctioning or its potential effect on meeting production goals. Appellant's arguments with respect to the employee assistance program and workshift changes also only constitute vague, unsupported allegations regarding management

³⁶ See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

³⁷ See *id.*

³⁸ See *supra* note 14.

wrongdoing. He did not present supporting evidence in conjunction with his arguments regarding management's handling of these administrative matters. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.³⁹ Therefore, the submission of these arguments would not require reopening of appellant's case for review on the merits. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

On reconsideration, appellant submitted evidence, including a December 8, 1976 grievance decision concerning the relocation of postal employees, a March 20, 1998 letter from an employing establishment official regarding compliance by postal managers with arbitration awards and grievance settlements, and excerpts from a 2013 union publication concerning the enforcement of collective bargaining agreements. However, these documents are not relevant to the underlying issue of the present case, *i.e.*, whether appellant established a compensable employment factor. The documents do not specifically concern appellant and do not directly relate to any of the particular incidents or conditions at work, which appellant claimed constituted compensable employment factors, such as the August 2009 job relocation to Lexington, Kentucky or the denial of his job bids in 2009. As noted above, OWCP is not required to review a claimant's claim on the merits when the evidence or argument submitted on reconsideration does not address the particular issue involved.⁴⁰

Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 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 his burden of proof to establish 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).

³⁹ See *supra* note 36.

⁴⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2019 and November 8, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 16, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board