

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

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| D.S., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0887 |
| |) | Issued: August 23, 2022 |
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| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Little Rock, AR, Employer |) | |
| |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 26, 2022 appellant filed a timely appeal from a May 16, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 14, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over 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).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 16, 2020 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 13, 2020 he sustained a respiratory condition while in the performance of duty. The claim form revealed that appellant's condition was caused when he became upset that he was not made aware of curtailed mail when he arrived early to work. On the reverse side of the claim form the employing establishment controverted appellant's claim, noting that his alleged injury was caused by his own willful misconduct. He stopped work on October 13, 2020.

In a statement dated October 13, 2020, W.B., an employing establishment postmaster, indicated that the routes on October 10, 2020 had been curtailed, which was a normal operating procedure used to ensure the success of the carriers. He indicated that on October 13, 2020 appellant yelled at D.J., a coworker, about curtailed mail, used profanities, and stormed out of the building. W.B. noted that appellant then requested to fill out an incident report to document his heart rate and nausea. He indicated that he asked appellant whether he needed an ambulance or a ride back to the employing establishment, which he declined.

In a statement dated October 13, 2020, K.B., appellant's coworker, indicated that she observed appellant become angry with W.B. and D.J. over curtailed mail.

In a statement dated October 15, 2020, D.J. indicated that on October 13, 2020 he observed W.B. tell appellant that the delivery point sequencing must be completed first and flats should be completed last. He noted that he replied that he "could not be there" and was "going to have an episode."

In a work excuse dated October 22, 2020, Dr. Lonnie Robinson, Board-certified in family medicine recommended that appellant remain out of work until November 5, 2020.

In an October 26, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a letter of transmittal of investigative file dated January 15, 2009 by the Equal Employment Opportunity Commission (EEOC) with regard to a complaint by appellant against J.P., the employing establishment's postmaster general.

In an information for pre-complaint counseling form dated January 13, 2014, appellant described various instances of W.B. retaliating against him following a previous EEOC complaint. He noted that he locked him out of the building and arrived late to work, which caused him to have to wait in his vehicle for up to one hour in severe cold weather.

OWCP also received a portion of an unsigned, undated settlement agreement and release of claims between appellant, J.P., and the employing establishment, which indicated that appellant agreed to accept a lump sum of money and, in exchange, W.B. would undergo EEOC anti-retaliation training and J.P. would instruct W.B. on the provisions of Section 704(a) of Title VII of the 1964 Civil Rights Act (42 U.S.C. § 2000e-3(a)) prior to W.B. resuming his duties.

In an attending physician's report (Form CA-20) dated October 26, 2020, Dr. Robinson, diagnosed anxiety related to work stress and recommended that appellant remain out of work from October 14 through November 5, 2020.

In a November 3, 2020 response to OWCP's questionnaire, appellant indicated that he believed the employing establishment retaliated against him for taking leave from work on a Saturday. He noted that this was not a single incident, and that he had experienced 14 years of abuse, which led to a total mental and physical breakdown.

In an unsigned statement, appellant indicated that he was subjected to years of abuse and harassment and that he had filed a retaliation complaint against W.B. in 2014. He noted that he did not have any problem with two interim Postmasters, R.P. and K.K., but when W.B. returned, the harassment continued.

By decision dated November 30, 2020, OWCP denied appellant's claim, finding that the evidence was insufficient to establish a medical condition in connection with the accepted employment incident or a psychological condition in connection with claimed work factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a narrative report by Dr. Robinson dated December 2, 2020, who indicated that appellant related complaints of stress and anxiety due to an adversarial relationship with his supervisor. Appellant alleged that the supervisor was abusive toward him, verbally attacked him, and created a hostile work environment. Dr. Robinson further noted that on October 14, 2020 M.C., his nurse practitioner, diagnosed acute stress reaction. On October 22, 2020 Dr. Robinson diagnosed anxiety disorder specifically related to appellant's work environment. Dr. Robinson noted that appellant did not have anxiety in areas of his life outside of work, and that the anxiety was specifically caused by the adversarial relationship with his supervisor.

In a report dated January 27, 2021, Dr. Veronica Zak, a psychiatrist, noted that appellant complained of anxiety, depression, and stress, which he attributed to an incident with his supervisor at work in October 2020. She conducted a behavioral health examination and diagnosed acute stress disorder, moderate episodes of recurrent major depressive disorder, anxiety, panic attack, and insomnia. Dr. Zak recommended counseling and medication management.

In follow-up reports dated February 11 and March 15, 2021, Dr. Zak noted that appellant related complaints of stress due to his job duties and conflicts at work. She reiterated her previous diagnoses and recommended medication management.

On May 4, 2021 appellant, through counsel, requested reconsideration of OWCP's November 30, 2020 decision.

By decision dated May 14, 2021, OWCP modified its prior decision, finding that the evidence of record established that appellant was claiming an emotional condition. It continued to deny the claim, however, finding that the evidence of record was insufficient to establish a compensable factor of employment "that fall[s] within the performance of duty under the FECA."

On May 12, 2022 appellant requested reconsideration of OWCP's May 14, 2021 decision. In support of his request, he submitted a May 4, 2022 narrative report by Dr. Zak, who diagnosed chronic post-traumatic stress disorder (PTSD). She reviewed the essential functions of appellant's job and opined that the PTSD was caused by his job duties over the last few years, a fight with his supervisor, and a hostile work environment.

By decision dated May 16, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.² OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.³ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁴

A timely request for reconsideration, including all supporting documents, must 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.⁵ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

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).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.607.

⁴ *Id.* at § 10.607(a). 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 (September 2020). 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.

⁵ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

⁶ *Id.* at § 10.608.

considered. Consequently, 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).⁷

In support of his request for reconsideration, appellant submitted a May 4, 2022 narrative report by Dr. Zak. While this medical evidence is new, it is not relevant because it does not address the underlying issue of the present case, which is factual in nature, *i.e.*, whether appellant has established an emotional condition in the performance of duty, as alleged. 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.⁸ Consequently, appellant is not entitled to a review of the merits based on the third above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3).⁹ 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).

⁷ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁸ *L.O.*, Docket No. 21-0030 (issued May 19, 2022); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ *R.R.*, Docket No. 20-0378 (issued March 9, 2021); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board