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

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| **C.K., Appellant** | ) | |
| **and** | ) | **Docket No. 20-1443** |
| | ) | **Issued: February 2, 2022** |
| **U.S. POSTAL SERVICE, SEMINOLE PROCESSING & DISTRIBUTION CENTER, Orlando, FL, Employer** | ) | |

*Appearances:*
*Wayne Johnson, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On July 27, 2020 appellant, through counsel, filed a timely appeal from a January 29, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated January 2, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq*.

## ***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***

On July 11, 2017 appellant, then a 63-year-old manager of maintenance operations support, filed an occupational disease claim (Form CA-2) alleging he sustained stress-related conditions due to factors of his federal employment, specifically constant harassment by his supervisors. He asserted that he first became aware of the relation of his claimed condition to his federal employment on May 12, 2017 and advised that he stopped work on that date. Appellant asserted that a delay in submitting medical reports was caused by the fact that he was visiting multiple doctors in an attempt to obtain documentation. On the reverse side of the form, appellant's immediate supervisor, M.D.W., indicated that he did not "necessarily agree" with appellant's claim.

In a July 11, 2017 statement, appellant asserted that, for a year, he had been "harassed and [berated] with the constant threat of dismissal" by his superiors. He alleged that the affected body parts/functions of his claimed conditions were his brain, his left eye (left-sided sight), and the left side of his body (including his left arm and leg).

In a July 19, 2017 letter, M.D.W. advised that the employing establishment was challenging appellant's emotional condition claim. He maintained that he had encouraged appellant to perform up to the standards of his supervisory position and to perform the tasks he had been assigned. M.D.W. asserted that appellant did not take criticism well and continued to do as he desired rather than as he was instructed to do. He believed that appellant failed to "see the big picture" and just focused on small tasks and projects. M.D.W. asserted that appellant's response in his Form CA-2 demonstrated that he had been "shopping for a doctor." The case record contains a description for the manager of maintenance operations support position.

In an August 7, 2017 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation regarding the cause of his claimed emotional condition. It provided a questionnaire for his completion, which posed questions regarding his reported employment factors. By letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

Appellant submitted medical reports, dated from May 17 to August 28, 2017, in which various hospital health care providers evaluated him for a stroke after he reported falling at home on May 14, 2017. In several of the reports, appellant reported that he had experienced muscle weakness and vision problems for a few days prior to his fall. In a May 22, 2017 report, Dr. David A. Henderson, a Board-certified internist, diagnosed: large intra-parenchymal hematoma centered within the right parieto-occipital lobe region; status post coronary artery bypass graft with mitral valve repair and aortic valve replacement in 2012; atherosclerotic heart disease with history of stenting in 2016; essential hypertension; left ventricular hypertrophy; ischemic cardiomyopathy; mixed hyperlipidemia; and hypokalemia. In a June 1, 2017 report,

Dr. Vincent Sciortino, a Board-certified family medicine physician, advised that appellant had some anxiety and a history of post-traumatic stress disorder. On August 21, 2017 he indicated that appellant could not work or drive due to his stroke and visual field deficit.

By decision dated October 2, 2017, OWCP denied appellant's emotional condition claim because he failed to establish a compensable employment factor. It found that he did not submit evidence supporting his claims of harassment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 2, 2018 appellant, through counsel, requested reconsideration of the October 2, 2017 decision. In an October 2, 2018 letter, counsel advised that appellant had filed a claim with the Equal Employment Opportunity Commission (EEOC), but that the claim had been dismissed. He asserted that, in an affidavit, appellant discussed the harassment to which he was subjected at work. Counsel maintained that OWCP's procedures recognized harassment as a compensable employment factor and noted that appellant had discussed his allegations regarding lack of management support, improper threats about investigations by the employing establishment's Office of Inspector General (OIG), and wrongful denial of wounded warrior leave accompanied by derogatory statements about veterans. He quoted language from the Board case of *Lillian Cutler*, 28 ECAB 125 (1976), which indicated that where an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment.

In an affidavit signed on September 27, 2018, appellant reported that he began working for the employing establishment in 1996 at a post office in Providence, Rhode Island, and that he transferred to his current work location in Orlando, Florida, in 2010 or 2011. He alleged that, after he requested leave under the Wounded Warriors Federal Leave Act on or around May 12, 2017, M.D.W. wrongly denied his request and said to him, "You disabled veterans think you should have everything handed to you on a silver platter."[3] Appellant maintained that M.D.W. had been aware that he sustained post-traumatic stress syndrome due to his military service in Vietnam. He asserted that, after this leave was denied, M.D.W. advised him that he would be placed in an absent without leave status if he went home, but that M.D.W. allowed him to leave the workplace after he informed him that the denial of his leave request violated federal law. Appellant indicated that he sought treatment in the hospital that evening due to vomiting and high blood pressure. He claimed that, since he started working in Orlando, he had problems with M.D.W. and M.W., the plant manager. Appellant asserted that M.W. asked him to write up employees for no reason and encouraged other employees to write him up for not doing his job, despite the fact he had proven he was doing his job. He alleged that M.W. told him he was not a team player, gave him excessive performance reviews (four in one year), and improperly removed him from maintenance duties. Appellant indicated that M.W.'s secretary spied on him and "bad-mouth[ed]" him, and that a prior maintenance manager, M.M., was told to fire him. He asserted that, after M.W.'s job was posted, M.W. asked if he was trying to take his job away. Appellant also alleged that he was wrongly

[3] Appellant submitted a copy of a form, signed on March 21, 2017, in which he requested leave under the Wounded Warriors Federal Leave Act for psychiatric treatment.

accused of losing $135,000.00 for the employing establishment because he sent trucks out, which were not full. He asserted that M.D.W. and M.W. falsely told him that the employing establishment's OIG was investigating him over the matter as a means of scaring him.

Appellant submitted notes, some of which bore dates from 2017, in which he discussed sources of stress at work. He alleged that management subjected him to improper disciplinary actions, falsely accused him of breaking safety rules, wrongly changed his days off, improperly assigned work tasks, and blamed him for work problems that were not his fault.

In a February 16, 2017 e-mail, M.D.W. questioned appellant about why he had not addressed various matters, including the securing of work areas and locking of bins, checkout procedures for parts/supplies, removal of bad batteries, and disposal of fluorescent tubes. He maintained that the chaos in appellant's work unit was due to his disorganization, poor management, and lack of oversight. On that date appellant responded by e-mail and asserted that he had insufficient staffing and that management blocked his efforts to resolve problems. In an April 4, 2017 decision, the EEOC dismissed appellant's complaint that management discriminated against him on the basis of age, wrongly accused him of incompetence, and threatened to fire him. The EEOC found that appellant had not shown that he was aggrieved or specified an employment harm from the alleged harassment.

In an undated statement, a supervisor, T.S, advised that he first came to know appellant in an official capacity in July 2014 and noted that, in addition to performing his duties as manager of maintenance operations support, appellant assisted maintenance managers in day-to-day operations. He asserted that, as several maintenance managers had come and gone, appellant had been the person who had been expected to run the maintenance department. T.S. indicated, "This especially becomes a problem when in between [m]aintenance [m]anagers or when they take leave."

By decision dated January 2, 2019, OWCP denied modification of its October 2, 2017 decision.

On January 2, 2020 appellant, through counsel, requested reconsideration of the January 2, 2019 decision. In a January 2, 2020 letter, counsel argued that appellant suffered undue stress when his leave request as a wounded warrior was denied. He maintained that the stress caused elevated blood pressure, which necessitated a hospitalization and that the stress was compounded by M.D.W. who claimed that appellant was engaged in "doctor shopping" while undergoing medical care at the hospital. Counsel discussed appellant's hospital records and noted that he had a preexisting condition of post-traumatic stress syndrome. He advised that appellant was diagnosed at the hospital with a hemorrhage, which was hypertensive in origin and noted, "[t]his was brought on by his post-traumatic stress disorder aggravated by his employment." Counsel asserted that, in his September 27, 2018 affidavit, appellant discussed compensable employment factors. He indicated that appellant had a prior claim that was accepted by the employing establishment and asserted that the present claim was "either a new incident or an aggravation of the prior claim." Counsel maintained that OWCP's procedures recognized harassment as a compensable employment factor and noted that appellant had discussed his allegations regarding lack of management support, improper threats about investigations by the employing establishment's OIG, and wrongful denial of wounded warrior leave accompanied by derogatory

statements about veterans. He quoted language from the Board case of *Lillian Cutler*, 28 ECAB 125 (1976), which indicated:

> "Where an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment."

Appellant submitted a May 4, 1994 document in which an OWCP claims examiner (CE) requested that an OWCP district medical adviser (DMA) provide an opinion regarding whether he had an employment-related emotional condition, which prevented him from working. The CE noted that OWCP had accepted an October 8, 1985 injury for lumbosacral strain, cerebral concussion, and compression fracture at L5 with emotional overlay. In a June 3, 1993 document, a CE indicated that appellant's case record for the same claim had been transferred to OWCP's office in Jacksonville, Florida. Appellant also submitted additional medical evidence, including a September 19, 2019 report from Dr. Shawnna Patterson, a Board-certified neurologist.

By decision dated January 29, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## ***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 or her own motion or on application.[4]

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.[5]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[6] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[7] If the request is timely, but fails to meet at least one of the

[4] 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).

[5] 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).

[6] 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 (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.

[7] *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[8]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[9] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[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).

Appellant 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.

In a January 2, 2020 letter, counsel argued that appellant suffered undue stress due to various incidents and conditions at work, which led him to develop physical conditions including elevated blood pressure and a brain hemorrhage. He asserted that appellant discussed these claimed incidents and conditions in his September 27, 2018 affidavit and noted that he had claimed compensable employment factors with respect to harassment by M.D.W. and other supervisors, lack of management support, improper threats about OIG investigations, and wrongful denial of wounded warrior leave (accompanied by a derogatory statement about veterans). However, OWCP had previously considered and rejected these same arguments when it denied appellant's claim on the merits. The claimed employment factors discussed in counsel's January 2, 2020 letter were also referenced in appellant's September 27, 2018 affidavit and counsel's prior letter dated October 2, 2018. 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.[11] 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 June 3, 1993 and May 4, 1994 documents concerning an October 8, 1985 injury that OWCP had accepted for lumbosacral strain, cerebral concussion, and compression fracture at L5 with emotional overlay. The submission of this evidence does not warrant a review of appellant's claim on the merits because these documents relate to an entirely different OWCP claim, which was filed many years before the filing of the present emotional condition claim on July 11, 2017. Appellant has not adequately articulated why this prior claim would be relevant to his present emotional condition claim. The Board has held that the submission of evidence or argument, which does not address the particular issue involved,

[8] 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).

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

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

[11] *See supra* note 9.

does not constitute a basis for reopening a case.[12] On reconsideration appellant also submitted additional medical evidence in support of his claim. However, this evidence is irrelevant to appellant's present emotional condition claim because OWCP has not accepted a compensable employment factor. The Board has held that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors.[13] Therefore, appellant also failed to satisfy the third 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).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[12] *See supra* note 10.

[13] *See B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).