

ISSUES

The issues are: (1) whether appellant has met her 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 her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 26, 2021 appellant, then a 55-year-old address management system technician, filed an occupational disease claim (Form CA-2) alleging that she experienced a buildup of stress for months due to factors of her federal employment. She reported that she first became aware of her condition and realized its relation to her federal employment on December 28, 2020. On the reverse side of the claim form the employing establishment noted that appellant stopped work on December 28, 2020 and had not returned.

In a development letter dated June 1, 2021, OWCP noted that it did not receive any other documentation with her claim. It advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding her alleged injury. It afforded both parties 30 days to respond.

No further documentation was submitted.

By decision dated July 16, 2021, OWCP denied appellant's emotional condition claim, finding that she had not submitted evidence to establish a compensable employment factor. It found that the information provided on her Form CA-2 was insufficient to establish her claim because her statement as to the cause of her condition was general and nonspecific, and it was unclear as to exactly what aspects of her federal employment she was attributing to the cause of her emotional condition. OWCP explained that appellant had not established the factual component of her claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP received numerous medical reports comprised of treatment notes, hospital admission records, inpatient psychological treatment notes, nurses' notes, and registered dietician notes dating from December 30, 2020 to June 24, 2021. These reports reflected that appellant was treated for anxiety and depression, with suicidal ideation, and a history of post-traumatic stress disorder (PTSD).

On July 30, 2021 appellant requested reconsideration noting that she had previously submitted evidence.

By decision dated August 5, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.⁹ When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.¹⁰ However, disability is not compensable when it results from factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.¹¹

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹¹ *Lillian Cutler, id.*

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹³ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁴ 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.¹⁵ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁶

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁷ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁸ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁹ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.²⁰ The claim must be supported by probative evidence.²¹ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.²²

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, as alleged

¹² *A.R.*, Docket No. 18-0930 (issued June 5, 2020); *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

¹³ *L.S.*, *id.*; *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁴ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *see also A.C.*, *supra* note 12.

¹⁵ *See A.R.*, *supra* note 12; *D.T.*, Docket No. 19-1270 (issued February 4, 2020).

¹⁶ *M.A.*, *supra* note 14; *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁷ *See R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹⁸ *Id.*

¹⁹ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

²⁰ *W.F.*, *supra* note 9.

²¹ *See L.S.*, *supra* note 12.

²² *Id.*

Appellant filed an occupational disease claim alleging that she had experienced a buildup of stress for months due to factors of her federal employment and that she was not sure if it was emotional abuse or mental abuse. In a development letter dated June 1, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim and advised her of evidence needed. This was to include a detailed statement of employment factors that she believed contributed to her condition.

Appellant has not submitted a statement detailing the employment factors that she believed caused her claimed condition. A statement describing the particular employment factors that caused or contributed to the claimed condition is crucial to appellant's claim.²³ Appellant has only alleged in general terms on the claim form that she had experienced stress at work and that she first became aware of the illness and its relationship to her federal employment on December 28, 2020. She did not describe any specific work factors or events related to her claimed job-related stress.

Because appellant has not provided a factual statement describing in detail the employment factors that she alleged caused or contributed to her stress at work, the Board finds that she has not met her burden of proof to establish a claim for compensation.²⁴ As appellant has not established the factual component of her claim by establishing a compensable factor of employment, the Board need not address the medical evidence of record with respect to causal relationship.²⁵

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

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.²⁶

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

²³ *L.B.*, Docket No. 17-2023 (issued August 21, 2018).

²⁴ *See R.B.*, *supra* note 17.

²⁵ *See S.S.*, Docket No. 18-0242 (issued June 11, 2018); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

²⁶ 5 U.S.C. § 8128(a); *see T.C.*, Docket No. 20-1536 (issued April 23, 2021); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁹ 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.³⁰

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).

Appellant's reconsideration request did not advance a new legal argument not previously considered, nor show that OWCP erroneously applied or interpreted a specific point of law. Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).³¹

Appellant also did not submit relevant new and pertinent evidence in support of her request for reconsideration.³² The underlying issue in the case was whether appellant established the factual component of her claim. The reconsideration request did not include any factual evidence identifying compensable employment factors or incidents alleged to have caused or contributed to her alleged emotional condition. Medical evidence as to her emotional condition does not provide a basis as to the factual component of her claim.³³ The submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a claim.³⁴

²⁷ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁸ *Id.* at § 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.

²⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

³⁰ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³¹ *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

³² *See F.D.*, Docket No. 19-0890 (issued November 8, 2019).

³³ *A.P.*, Docket No. 18-0930 (issued June 5, 2020); *R.B.*, *supra* note 17.

³⁴ *M.E.*, Docket No. 18-0553 (issued November 5, 2018).

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).³⁵

The Board, accordingly, finds that appellant did not meet 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.³⁶

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty, 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).

ORDER

IT IS HEREBY ORDERED THAT the July 16 and August 5, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 2022
Washington, DC

Alec J. Koromilas, 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

³⁵ *T.M.*, Docket No. 19-0535 (issued July 25, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

³⁶ *See S.M.*, Docket No. 18-0673 (issued January 25, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *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).