

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

G.T., Appellant)	
)	
and)	Docket No. 21-1276
)	Issued: September 8, 2022
U.S. POSTAL SERVICE, WHITE STATION)	
POST OFFICE, Memphis, TN, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2021 appellant filed a timely appeal from a June 7, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the last merit decision dated April 24, 2020, 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).

FACTUAL HISTORY

On September 17, 2019 appellant, then a 57-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition due to being

¹ 5 U.S.C. § 8101 *et seq.*

contacted by the employing establishment by Priority Mail under adverse conditions. He noted that he first became aware of his condition and realized its relation to his federal employment on September 6, 2014. The employing establishment noted that appellant had not reported to work and declined a job offer on September 17, 2019.²

In a development letter dated November 4, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. By separate development letter of even date, OWCP requested that the employing establishment provide a statement from a knowledgeable supervisor as to the accuracy of appellant's allegations and provide further evidence.

In a December 1, 2019 response to OWCP's development questionnaire, appellant indicated that he was contacted by his supervisor, R.B., by telephone, on September 6, 2014 and was told not to return to his position as a letter carrier until further notice. He also noted that, in January 2015, he was ordered to come in for a meeting, which resulted in him being escorted out of the workplace and removed from his position as a letter carrier. Appellant explained that he was a limited-duty letter carrier and had filed numerous Equal Employment Opportunity Commission (EEOC) complaints regarding constant harassment from 2010 through 2015. He alleged that a manager, M.L., indicated that she did not like injured employees. Appellant alleged that, in one incident, he was "verbally threatened" by M.L., and she pointed an ink pen in his face in a threatening gesture. He noted that he called the police to intervene and protect him. Appellant alleged that this placed pressure on him as an injured employee and caused him to experience severe depression and anxiety. He noted that, during the month of January 2015, he was placed in the hospital for mental stress. Appellant alleged that being removed from his position caused permanent emotional damages each time he thought about being harassed. He alleged that it triggered an emotional uneasiness that would affect his life and explained that it was called stressful traumatic symptoms. Appellant indicated that it was a daily struggle, and he was placed in a stressful work situation that caused emotional confrontations and made his workplace a hostile environment. He alleged that he was subjected to lies and constant manipulative statements in the workplace, the employing establishment constantly refused to provide job offers that complied with the restrictions of his treating physician, refused to work with him as a limited-duty employee, and had work practices that conflicted with his medical restrictions. Appellant alleged that being removed from his position after 28 years as a letter carrier limited his ability to find other work.

Appellant alleged that his current depression continued on August 23, 2019, when he contacted the employing establishment to see how long they were going to keep him off work and this triggered his excessive anger. He confirmed that he was receiving treatment for his depression.

In November 14 and 26, 2019 reports, Paul Deschenes, Psy.D., a clinical psychologist, noted that appellant's problems began in 1991 to 1992 during the government shutdown, which caused financial problems that resulted in emotional problems. He indicated that appellant had been seeing a psychiatrist at the Department of Veterans Affairs since 2013 and was treated for depression and anxiety. Dr. Deschenes diagnosed major depression disorder, recurrent, moderate; anxiety disorder, unspecified; and irritability and anger. He related that appellant believed that his

² Appellant has prior claims alleging emotional conditions, including OWCP File Nos. xxxxxx491 and xxxxxx173. Her claims have not been administratively combined.

present condition was work related. Dr. Deschenes opined that it appeared that appellant had problems with judgment and impulse control.

OWCP received a copy of an EEOC order dated November 29, 2017, and a copy of the February 2, 2015 Form CA-2 related to OWCP File No. xxxxxx491.

OWCP also received March 13, 2014 emergency department discharge instructions from Dr. Lanetria Garrett, an internist, who noted that appellant was treated for anxiety disorder. Dr. Garrett also provided a disability certificate for one day off work.

OWCP received health care plans for treatment of recurrent episodes of depression.

By decision dated April 24, 2020, OWCP denied appellant's emotional condition claim. It determined that he had not established a factual basis for his claim because the evidence submitted was insufficient to substantiate the implicated factors of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 12, 2021 appellant requested reconsideration. He submitted a narrative statement wherein he repeated his prior allegations and requested that OWCP develop the medical evidence with a medical questionnaire related to the inpatient care he received for his depression and anxiety disorder. Appellant argued that there was no indication that the medical evidence had been developed.

OWCP received progress notes from Dr. Deschenes dated November 26 and December 12, 2019, January 2 and 21, February 11, and April 9 and 23, 2020.

By decision dated June 7, 2021, OWCP denied appellant's request for reconsideration, 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 own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (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.⁴

³ 5 U.S.C. § 8128(a); *see O.G.*, Docket No. 18-0359 (issued August 7, 2019); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ 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.⁷

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).

On reconsideration appellant argued that OWCP failed to develop the medical evidence. The underlying issue in this case is whether appellant submitted sufficient evidence to establish a compensable factor of employment. This is a factual issue, which must be addressed by pertinent new and relevant factual evidence.⁸ The Board finds that the arguments concerning failure to develop the medical evidence are irrelevant to the underlying issue which is factual in nature. Along with his reconsideration request, appellant submitted a narrative statement wherein he repeated his allegations that his condition was caused by actions of the employing establishment. The Board finds that appellant's statement does not show legal error by OWCP or advance a legal argument not previously considered by OWCP. Consequently, appellant was 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).⁹

Appellant also did not submit any pertinent new and relevant evidence to establish a compensable employment factor. While he provided progress notes dated November 16 and December 12, 2019, and January 2 and 21, February 11, and April 9 and 23, 2020, these progress notes are irrelevant to the underlying issue, which is factual in nature. Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.¹⁰ Thus, appellant 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).

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.

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See A.M.*, 21-0603 (issued November 10, 2021); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁹ *T.G.*, Docket No. 18-1064 (issued April 26, 2019).

¹⁰ *H.H.*, Docket No. 18-1660 (issued March 14, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

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 June 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.¹¹

Issued: September 8, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ Upon return of the case record, OWCP may consider administratively combining the current claim file with OWCP File Nos. xxxxxx173 and xxxxxx491.