

FACTUAL HISTORY

On February 2, 2019 appellant, then a 35-year-old law enforcement agent, filed an occupational disease claim (Form CA-2) alleging that he developed anxiety and stress due to factors of his federal employment, including a significant amount of physical and emotional stress within the work environment causing him to seek treatment. He explained that he was in the investigative process and had experienced retaliation from management. Appellant noted that he first became aware of his condition on December 7, 2018 and realized its relation to his federal employment on January 11, 2019.

Appellant submitted several statements describing the employment factors that he believed contributed to his stress-related condition. He asserted that he experienced a significant amount of physical and emotional stress due to the gross neglect from management. Appellant contended that the supervisory air marshal in charge (SAC), D.B., the deputy supervisory air marshal in charge (DSAC), J.D., and the assistant supervisory air marshal in charge (ASAC), C.T., knowingly falsified his Fiscal Year (FY) 2018 performance rating calculation sheet, removed and withheld documents in his personnel record, made consistent and misleading statements, ignored multiple requests for a meeting, and made verbal threats to him. He explained that in December 2018 he was diagnosed with an ulcer and gastritis and contended that the symptoms had continued to increase to the point that he was admitted to the hospital in January 2019 for complaints of chest and stomach pain.

Appellant submitted after hospital visit summary reports dated January 11 and 13, 2019, and laboratory and diagnostic test results. The medical documentation indicated that appellant received medical treatment for complaints of chest pain and acute epigastric pain.

In a note dated January 31, 2019, Dr. Jason Hackett, a Board-certified family practitioner, indicated that he was treating appellant for anxiety that was directly related to his work environment.

In a February 8, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary information.

On March 6, 2019 appellant responded to the development letter indicating that he had never experienced a prior stress-related condition and never been under the care of a psychiatrist/psychologist. Appellant reported that he had no other sources of stress and alleged that his anxiety was causally related to his circumstances at work.

Appellant submitted a series of e-mails dated January 3 through 7, 2019 and February 14 through March 4, 2019 between himself and C.T.; e-mails dated November 19 through December 10, 2018 between himself and A.B.; an August 28, 2018 letter from appellant's supervisor; a supervisory candidate endorsement form dated September 19, 2018; an employing establishment grievance-mediation request form and statement dated December 2, 2018; a

November 27, 2018 statement; a summary of complaint against C.T. and J.D.; his FY 2018 performance appraisal with his comments; and February 2, 2019 meeting notes with D.V.

OWCP also received additional medical evidence. In a February 28, 2019 letter, Brian P. Jennings, a licensed clinical social worker, recounted that appellant's work environment had become very stressful since receiving a poor performance evaluation after years of receiving highly rated performance evaluations. He diagnosed general anxiety disorder.

In letters dated March 4 and May 3, 2019, Dr. Anthony Henley, a licensed psychologist, recounted that appellant began to experience significant symptoms of chest and stomach pains, with sudden onset, at approximately December 7, 2018. He indicated that appellant had significant pressures at his work revolving around conflicts with management and negative performance evaluations. Dr. Henley discussed appellant's evaluation findings and reported that appellant had generalized anxiety disorder. He reported that it was clear that the generalized anxiety disorder was directly caused by the stress associated at work.

In notes dated March 5 and April 24, 2019, Dr. Hackett indicated that he was treating appellant for anxiety that was directly related to his work environment. He reported that appellant had experienced panic attacks, anxiety with somatoform symptoms such as chest pain, dyspnea, abdominal pain, and headaches. Dr. Hackett noted that these symptoms did not exist until the events surrounding appellant's 2018 performance review. He opined that the actions by C.T., J.D., and D.B. caused appellant's anxiety. Dr. Hackett explained that appellant was physically fit for duty but recommended that he not return to the same workplace. He also completed employing establishment medical and psychological standards forms.

In a letter dated March 8, 2019, appellant informed OWCP that executive management had ignored his requests for signed witness statements from those individuals involved in management meetings.

In a report dated May 17, 2019, Dr. James Caviness, an occupational medicine specialist, noted that appellant had been off work since December 8, 2018. He indicated that appellant's treating physician and psychologist had unequivocally stated that appellant had generalized anxiety disorder due to work stress.

By decision dated June 27, 2019, OWCP denied appellant's stress-related condition claim, finding that he had not established any compensable employment factors.

On July 26, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 4, 2019.

Appellant submitted a June 28, 2019 letter from the U.S. Office of Special Counsel, e-mails from ASAC A.B. about acquiring witness statements, witness affidavits from ASAC D.V. and ASAC R.L., a February 24, 2019 letter by ASAC D.V., an October 30, 2019 reasonable accommodation request form, and counseling appointment notes dated March through November 2019.

OWCP also received an August 12, 2019 letter from the Equal Employment Opportunity Commission (EEOC) informing appellant that his complaint had been accepted and that an investigation was pending.

In reports dated October 30 and November 4, 2019, Dr. Hackett indicated that he had treated appellant for anxiety, which was directly related to his work environment. He explained that appellant was physically fit for duty, but recommended that he not return to the current workplace with the current leadership because it would most likely increase his anxiety. Dr. Hackett also completed an employing establishment medical and psychological standards form dated December 3, 2019.

By decision dated December 12, 2019, OWCP's hearing representative affirmed the June 27, 2019 decision.

On December 18, 2020 appellant requested reconsideration. He alleged that the mismanagement of his performance review process constituted error and abuse on behalf of the employing establishment. Appellant indicated that he was submitting e-mails from his supervisor, ASAC D.V., who described how he was asked to reproduce and sign a new performance evaluation. He asserted that ASAC C.T. mishandled his performance appraisal and indicated that he was submitting witness statements to support his contention that he worked in a hostile work environment. Appellant also contended that the mismanagement of his performance appraisal process should be considered part of his work duties since all employees are required to undergo the performance appraisal process. He further argued that he suffered stress and anxiety due to his work duties as a Special Mission Coverage (SMC) Coordinator and significant understaffing in the TSA Freedom Center/Missions Operation Center.

Appellant provided e-mails dated November 19, 2018 and April 2, 2019 from ASAC D.V.; a memorandum by ASAC D.V. about appellant's performance appraisal; a FY 2018 performance appraisal with a rating of "Exceeded Expectations"; a FY2018 performance appraisal with a rating of "Achieved Excellence"; and various EEOC documents, including a complaint, witness affidavits from DSAC J.D., ASAC D.V., and ASAC C.T., and appellant's rebuttal to ASAC C.T.'s witness affidavit.

Appellant also submitted an August 12, 2019 letter from the EEOC, which was previously of record.

By decision dated February 5, 2021, OWCP denied modification of the December 12, 2019 decision.

On January 27, 2022 appellant requested reconsideration.

In an e-mail dated August 2, 2019, appellant alleged that he continued to face retaliation at his workplace as a result of his EEO proceedings. He explained that he was placed in a temporary duty (TDY) position, "approximately a month ago," within a different section of the employing establishment because of his inability to work under his previous leadership within his prior section of the employing establishment. Appellant asserted that the retaliatory acts began in his new position on "July 1" when management wrote him up for being absent without official leave (AWOL) even though he had previously informed management of his absence. He described

situations where management had denied a request for leave without pay (LWOP) and to change shifts. On “July 2” he indicated that he was reprimanded by ASAC S.S. for addressing her by her first name instead of by her title when other employees were permitted to address her by her first name. On “July 7” he requested a change in shift to make him more available for training and meetings; however, he contended that management denied his request to preclude him from receiving the training and learning. Appellant also contended that he was required to furnish medical documentation for all his medical appointments, regardless of taking leave or not, even though no other employee was required to furnish a doctor’s note for every single medical appointment.

By decision dated March 3, 2022, 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 FECA² 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 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.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.⁵ If it 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

² *Id.*

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

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

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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). Chapter 2.1602.4b.

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).

ANALYSIS

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He also did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R § 10.606(b)(3).⁸

However, appellant did submit pertinent new and relevant evidence not previously considered in the form of an August 2, 2019 e-mail. In this e-mail, appellant contended that he believed that he was still the subject of retaliation and discrimination. In this regard, appellant indicated that on "July 1" management placed him in an AWOL status even though he had previously apprised them of his absence; that he was placed in a TDY position about a month prior to his writing, at which time ASAC S.S. admonished him on "July 2" but not others for addressing her by her first name; that on "July 7" management denied his request for a change in shift to facilitate his training; and that he was required to furnish medical documentation for all of his medical appointments when his coworkers were not required to do so. The e-mail, which contains new contentions, is new and relevant to the underlying issue of whether appellant has established any compensable factors regarding his employment-related stress claim and has not been previously considered by OWCP.

The Board has held that to support a request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁹ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.¹⁰ The Board finds that appellant's contentions contained in the August 2, 2019 e-mail submitted on reconsideration constitute relevant and pertinent new evidence not previously considered by OWCP. Therefore, the Board finds that appellant is entitled to a review of the merits based on the third requirement of 20 C.F.R. § 10.606(b)(3).¹¹ Accordingly, the Board will set aside OWCP's March 3, 2022 decision, and remand the case for an appropriate merit decision.

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim.

⁸ *Supra* note 4; *see K.F.*, Docket No. 19-1846 (issued November 3, 2020).

⁹ *See L.W.*, Docket No. 22-0546 (issued January 20, 2023); *L.O.*, Docket No. 21-0030 (issued May 19, 2022); *Annette Louise*, 54 ECAB 783 (2003).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.606(b)(3); *see I.V.*, Docket No. 21-1356 (issued February 9, 2023); *L.D.*, Docket No. 22-0214 (issued September 21, 2022); *M.N.*, Docket No. 22-0243 (issued June 28, 2022); *see also S.C.*, Docket No. 20-1661 (issued May 6, 2022); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 17, 2023
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