

properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 18, 2023 appellant then a 53-year-old senior delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2023 he developed mental and emotional distress, aggravation of post-traumatic stress disorder (PTSD), depression, anger, irritability, paranoia, hopelessness, and rage when his manager, C.C., without contradiction allowed and encouraged V.D., a coworker, to harass, intimidate, cause emotional distress and mental suffering by blaming him and two other disabled employees for his required overtime during a 10 minute "rant" which occurred during an official meeting while in the performance of duty.

Appellant provided documentation of his 50 percent Department of Veterans Affairs service-connected disability due to PTSD and persistent depressive disorder. He further submitted a February 1, 2023 statement addressed to C.C. regarding the 10-minute remarks made by V.D. during the official meeting on that date, during which he blamed three employees, including appellant, for the overwork of the remaining carriers, as they performed light and limited duty and had not "walked for years." V.D. requested that C.C. take appellant's route away and asserted that the three employees were the reason why he had to work overtime. Appellant alleged that management failed to properly manage staffing and attendance, and to prevent harassment and intimidation by V.D., resulting in a hostile workplace.

In a February 27, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed, including a detailed description of the implicated work factors and copies of any grievance documents related to the claim, and provided a questionnaire for his completion. In a separate development letter of even date, OWCP also requested that the employing establishment provide information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

Appellant provided statements dated December 8 and 10, 2018, alleging that temporary supervisor, S.C., had not provided him sufficient auxiliary assistance, and was punishing him for her mistake, and that she failed to respond to his request to use the restroom at the Wagner station in retaliation. He also provided an October 23, 2017 statement alleging that manager U.J. was watching him on his route without explanation, which he felt was a form of intimidation given the Equal Employment Opportunity Commission (EEOC) complaint he had filed against U.J.

In October 2 and 26, 2017 witness statements, L.F., chief union steward, asserted that appellant was instructed by U.J. to keep the mail up front with him following each swing shift and she subsequently explained that this went against a memorandum that clearly states that no mail was to be kept up front. She further asserted that he had not been given the same respect and courtesy from management.

On January 2, 2020 appellant provided a statement in support of his EEOC alleging that work was taken from him and given to less disabled carriers. He further alleged hostile treatment and retaliation based on race.

In March 11, 2023 statements, appellant alleged that an additional incident occurred on March 10, 2023 concerning how overtime on his route was divided between carriers. Supervisor R. yelled at him while he was in the middle of the work floor in front of coworkers causing him embarrassment and shame because of his physical disabilities. He asserted that this was an obvious attempt to shame him in front of his fellow employees. Appellant related that V.D. also verbally assaulted him concerning the portion of his route that he wanted to carry for overtime. In a separate statement of even date, he reported that Supervisor R. harassed him by repeatedly requesting his medical restrictions and criticizing the time he took to case the mail on his route.

On March 14, 2023 Dr. Yun Chong, a psychiatrist, diagnosed severe anxiety due to stress and additional PTSD symptoms. On March 23, 2023 he completed an attending physician's report (Form CA-20) diagnosing severe symptoms of anxiety due to PTSD exacerbated by stress. Dr. Chong checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity.

On March 29, 2023 the employing establishment responded to OWCP's development letter, and asserted that on February 1, 2023 a carrier was asking questions about routes because there were no able bodies on those routes. It disagreed that violations occurred. The employing establishment noted that appellant worked four hours a day casing different routes. It further noted that the February 1, 2023 meeting concerned carrier performance, and that a carrier asked why the burden was being place on those who could carry mail. The employing establishment asserted that when appellant began to speak about others, management interrupted him and informed the group that there would be no discussion of any individual's performance or status.

By decision dated April 5, 2023, OWCP denied appellant's stress-related condition claim, finding that he provided vague and general information without supporting evidence, while the employing establishment provided multiple statements from eyewitnesses which were in direct conflict with his stated sequence of events such that he had not established a compensable employment factor. It concluded, therefore, that the requirements had not been met for establishing that he sustained an injury as defined by FECA.

On May 11, 2023 appellant requested reconsideration. He submitted additional statements regarding the events of the February 1, 2023 meeting. Appellant further explained the basis for his disagreement with OWCP's evaluation of the evidence submitted. He alleged retaliation on the part of the claim's examiner. Appellant also provided copies of text messages requesting statements from his coworkers.

On May 18, 2023 J.G., a coworker, responded to a questionnaire prepared by appellant and indicated by answering "Yes" that V.D. blamed light-duty or limited-duty carriers for the extra overtime that he had been forced to carry, that he mentioned appellant by name, and that C.C. allowed him to do so.

By decision dated June 14, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim,⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that 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, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁹ On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁰

³ *Id.*

⁴ *L.G.*, Docket No. 21-0690 (issued December 9, 2021); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *L.G., id.*; *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *See L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁹ *See S.K., supra* note 7; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ *See S.K., id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.¹¹ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹² For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹³ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁴

ANALYSIS -- ISSUE

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on February 1, 2023, as alleged.

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.¹⁵ Instead, he maintained that C.C., his supervisor, did not object to or prevent this harassment, resulting in a hostile work environment, and that he experienced harassment at work by a coworker, V.D., during a meeting on February 1, 2023.

There is no dispute that on February 1, 2023 there was a carrier meeting at the employing establishment chaired by C.C. C.C. confirmed that V.D. spoke during the meeting, but disagreed that his remarks rose to the level of harassment. She related that he was asking questions about routes because there were no able bodies on those routes, and that he asked why the burden was being placed on those who could carry mail. The employing establishment asserted that when V.D. began to speak about others, management interrupted him, and informed the group that there would be no discussion of an individual's performance or status. Appellant has not provided any evidence such as witness statements supporting his allegations of harassment by V.D. or C.C.'s failure to act.¹⁶ Consequently he has not established a compensable work factor with respect to these allegations.¹⁷

¹¹ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

¹² *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

¹³ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁴ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *Supra* note 9.

¹⁶ See *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *J.B.*, Docket No. 07-0664 (issued September 13, 2007).

¹⁷ See *E.G., id.*; *D.B.*, Docket No. 19-1310 (issued July 21, 2020).

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.¹⁸

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 does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁹ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²⁰ 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.²¹ A timely application for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.²² When a timely application 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.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration, appellant submitted a May 18, 2023 witness statement from J.G., a coworker, corroborating the events of the February 1, 2023 meeting and statements of V.D. to which he attributed his emotional condition. As this statement addresses the underlying issue of whether he experienced a compensable employment event, it constitutes relevant and pertinent new evidence that was not previously considered. Therefore, the Board finds that the submission

¹⁸ See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁹ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

²⁰ 20 C.F.R. § 10.607.

²¹ *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). See also Chapter 2.1602.4b.

²² *Id.* at § 10.606(b)(3).

²³ *Id.* § 10.608(a), (b).

of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).²⁴

Consequently, the Board will set aside OWCP's June 14, 2023 decision and remand the case for an appropriate merit decision on appellant's claim.²⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on February 1, 2023, as alleged. The Board further finds that OWCP improperly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed. The June 14, 2023 decision is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 29, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁴ *Id.* at § 10.606(b)(3); *see also I.M.*, Docket No. 22-1287 (issued May 23, 2023); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

²⁵ *I.M.*, *id.*; *FK.*, Docket No. 21-0998 (issued December 29, 2021).