

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

_____)
D.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Washington, DC, Employer)
_____)

Docket No. 23-0852
Issued: February 16, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 7, 2023 appellant filed a timely appeal from a March 14, 2023 merit decision and an April 5, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The Board notes that appellant has additional appeals pending before the Board under Docket No. 23-0858 concerning an April 5, 2023 OWCP merit decision under OWCP File No. xxxxxx122 and Docket No. 23-0857 concerning a March 28, 2023 OWCP decision under OWCP File No. xxxxxx121.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 5, 2023 decision, appellant submitted additional evidence to OWCP and with his appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an emotional condition in the performance of duty on January 26, 2023, as alleged; and (2) 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 January 27, 2023 appellant, then a 39-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2023 he began to experience numbness in his left hand and two fingers due to the stressful work environment while in the performance of duty. He alleged that he was subjected to conflicting instructions and ongoing harassment from his current supervisor.⁴

Appellant provided a statement, which described specific scenarios dated from August 2022 through January 27, 2023. He alleged that, in January 2023 A.L., his section chief, had harassed him about his leave and that, G.C., an acting section chief, asked him to change his physicians note to please management. Appellant also asserted that A.L. had threatened to counsel him when he refused to sign the negative appraisal. He alleged that on January 3, 2023 A.L. and G.C. informed him that he would not be receiving any training and that he should learn on his own with trial and error. Appellant alleged that, on January 12, 2023, T.M., an acting unit chief threatened him about not signing a cease and desist order when T.M. made false allegations about how appellant looked at him and made a funny noise. He further asserted that G.C. refused to provide assistance or clarification concerning his WebTA duties.

OWCP received a duty status report (Form CA-17) dated December 14, 2022 by an unknown provider, who indicated that appellant could work limited duty, effective December 9, 2022.

In a return to work note dated January 10, 2023, Dr. Alan Schreiber, a Board-certified orthopedic surgeon, indicated that appellant may return to light-duty work on January 11, 2023 with restriction of no lifting.

⁴ OWCP assigned the present claim OWCP File No. xxxxxx881. Appellant has several previously -filed traumatic injury claims (Form CA-1). Under OWCP File No. xxxxxx708, he filed a Form CA-1 on December 11, 2019 alleging that on November 25, 2019 he experienced heavy breathing and shortness of breath after being threatened and harassed while in the performance of duty. Under OWCP File No. xxxxxx730, appellant filed a Form CA-1 on December 17, 2014 alleging that on August 25, 2014 he developed post-traumatic stress disorder (PTSD) and vertigo due to stress from a hostile work environment while in the performance of duty. Under OWCP File No. xxxxxx121, he filed a Form CA-1 on December 2, 2022, alleging that on November 29, 2022 he experienced numbness, tightness, and pain in his left hand when his supervisor confronted him while in the performance of duty. Appellant also has a previously-submitted occupational disease claim (Form CA-2). Under OWCP File No. xxxxxx122, filed on December 5, 2022 he alleged that he experienced tightness and muscle pain in his left arm due to harassment from his supervisor. OWCP has administratively combined OWCP File Nos. xxxxxx881, xxxxxx708, xxxxxx730, xxxxxx122, and xxxxxx121, with the latter serving as the master file.

Appellant also submitted a series of emails dated October 4, 2022 through January 27, 2023, which describe interactions with his supervisors, A.L., T.M., and G.C., and his coworkers. He alleged that T.M. made false accusations against him, that management should require A.P. to recuse himself from being the decision-maker on both issues concerning the mediation and proposal of the seven-day suspension. Appellant also contended that his supervisors did not follow his work restrictions, did not approve his requests for sick or annual leave, revoked his telework agreement, did not provide him with proper training, and did not inform him of a dress code at work. He indicated that he reached out to his chain of command regarding the hostile work environment, but they failed to resolve the issues.

OWCP received a series of emails related to the alleged January 26, 2023 employment incident. At 4:19 p.m. G.C., informed appellant that the next period to validate WebTA would be this upcoming January 30, 2023 and not January 23, 2023. He requested that appellant send out biweekly reminders of timecard validation and certification dates with the correct corresponding dates for validation and certification. Appellant responded in a January 24, 2023 email at 10:51 a.m. requesting clarification from G.C. regarding appellant's duties as the timekeeper and approval for a proposed notice timecard validation with the dates of Thursday, January 26, 2023 and Friday, January 27, 2023. G.C. responded at 12:34 p.m. with a list of appellant's timekeeper responsibilities and duties. At 4:31 p.m., appellant informed G.C. that he was instructed not to manage administratively uncontrollable overtime duties and that he was encouraged to do his own training for the job. He indicated that he had requested more hands-on training and mentoring, but did not receive such training.

On January 26, 2023 appellant, *via* an 1:48 p.m. email, requested that G.C. provide further clarification of validation and certification dates. He alleged that his former supervisor, A.L., had advised him that the WebTA card needed to be submitted by close of business (COB) Thursday of the second week, but no later than COB Friday. G.C. responded in an email at 1:56 p.m. that A.L. would not have provided different dates and requested written confirmation of this different guidance so that he could confer and clarify any information that appellant may be misinterpreting. He requested that appellant email reminder messages in accordance with the appropriate timeframe for validating WebTA and that appellant rely on his timekeeper training, which specifies when time and attendance sheets should be validated. In an email sent on 2:06 p.m., appellant reiterated that A.L. had verbally instructed appellant to validate timesheets on the second Thursday of the time period, but no later than the second Friday. He also requested that G.C. approve the email to be sent out regarding WebTA certification. G.C. responded at 2:17 p.m. and directed appellant to execute the reminder to correspond with the pay period calendar and provided a weblink. He further instructed appellant to validate WebTA per policy as presented to him during his timekeeper training. G.C. noted that appellant should disregard any guidance that appellant may have misinterpreted from A.L. as he was certain that A.L. would not have misinformed appellant.

On January 26, 2023 at 2:55 p.m., appellant emailed T.M., A.L., and G.C. and asserted that he was experiencing an ongoing hostile work environment due to the varying timekeeping instructions provided by G.C. He repeated his assertion that A.L. had given him validation dates of the second Thursdays and no later than the second Fridays of the pay periods and that timekeepers were not permitted to validate for employees. Appellant related that he could not work in a hostile toxic work environment because it triggered his PTSD. At 3:20 p.m., he reported

that his left hand and the two fingers that were injured at work were numb because of the stressful environment.

T.M. responded *via* a January 26, 2023 email at 3:34 p.m. and recounted that appellant had been trained to report workplace injuries by A.L. He also noted that G.C. was appellant's new supervisor and section chief, and that appellant was obligated to follow the directions of his current supervisor. T.M. further indicated that appellant was provided with a federal pay calendar because his instructions to the unit employees of the date to validate timesheets were incorrect. Appellant submitted an email at 3:54 p.m. and asserted that he had not received the clarification requested, that he had not received necessary training, and that both A.L. and G.C. had informed appellant that he would have to learn by trial and error.

In an undated statement to acting deputy assistant director, M.F., appellant alleged that he did not feel safe around T.M. and A.L. due to their harassment and retaliation and that their actions triggered appellant's PTSD and caused him to have panic attacks. He contended that they made false accusations in reports to the Department of Labor, gave appellant a negative appraisal, revoked appellant's telework agreement, acted unprofessionally towards appellant, threatened appellant to move faster in order to complete his work, and ignored his work restrictions.

In a letter dated February 3, 2023, D.H., a human resources specialist for the employing establishment, controverted appellant's claim and asserted that appellant's alleged injury did not occur in the performance of duty. He contended that appellant had not provided any evidence that he was given prior verbal instructions that conflicted with the written instructions given by appellant's current supervisor. D.H. also argued that appellant was provided with timekeeper training and job aid. He further asserted that, according to appellant's resume, appellant had worked on time and attendance issues and advised supervisors on timekeeping and other administrative functions. D.H. noted that appellant had two other claims for harassment that were denied and currently in the appeals process. He cited to prior ECAB cases, which established that a claimant must establish a factual basis for his or her allegations of an emotional condition caused by factors of his or her employment.

OWCP received copies of power point presentations with instructions on various WebTA timekeeper duties, a statement of certification from appellant dated November 2, 2022, which indicated that he had reviewed the power point slides provided for supervisor or timekeeper access.

Appellant submitted emails and correspondence regarding a mediation session on February 10, 2023 to resolve his informal equal employment opportunity precomplaint. He also submitted an 18-page statement of topics to discuss during the February 10, 2023 mediation session.

In a letter dated February 8, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a letter dated February 9, 2023, appellant noted that the current WebTA and the WebTA at his old agency were not the same system. He further alleged that his position was a GS-9 trainee

level, so he was required to be trained until he reached the GS-12 level. Appellant asserted that he was threatened by A.L. on January 3, 2023 for refusing to sign the reprisal performance appraisal and told that he would have to learn by trial and error. He alleged that T.M. advised him not to file a workers' compensation claim and that what he was receiving from management did not constitute a hostile workplace. Appellant reported that T.M. told him that a hostile workplace would be if he threw a gun on his desk. He contended that management was only challenging his claim because of his current Equal Employment Opportunity Commission complaint. Appellant also alleged that A.L. informed him that he would not need any training because of his prior work experience. He asserted that G.C. demanded that he get a new physician because of his work restrictions.

OWCP received a complaint of possible prohibited personnel practice alleging that on October 21, 2022 A.L. illegally recorded their conversation over Microsoft Teams.

In a memorandum dated February 3, 2023, T.M. asserted that all of the emails provided by appellant were a fabricated perspective created by him and did not include the entire string of emails. He alleged that appellant exaggerated about his claims of lack of training and unrealistic assignments. T.M. noted that, according to appellant's application documents and resume, appellant had attested to a significant experience at a level above and beyond the minimal tasks he had been assigned. He also asserted that appellant had made several false claims against him, including that he had stalked appellant, made a comment about a gun, and violated policy.

In a February 3, 2023 memorandum, G.C. noted his disagreement with appellant's allegation that he was given conflicting directions by A.L. and himself. He asserted that asking appellant to carry on his assignment pursuant to written agency policy did not constitute harassment. G.C. included emails in which he provided appellant with instructions on WebTA reminders. He alleged that, despite these specific instructions, appellant continued to email him asking for clarification because his instructions conflicted with previous instructions from A.L. G.C. noted that A.L. denied giving appellant conflicting instructions. He also indicated that, despite appellant's allegations that he was not properly trained, appellant's resume and self-certified assessment demonstrated that he was a qualified expert in timekeeping and had prior experience with submitting payroll through the National Finance Center.

In a memorandum dated February 6, 2023, A.L. alleged that appellant falsely claimed that no training was offered to him and provided a list of training courses that appellant had completed. He also asserted that he had provided appellant with one-on-one instruction regarding navigation and use of the employing establishment intranet, search functions within the websites, navigation, and use of the WebTA system.

Appellant submitted an email dated February 28, 2023 to T.M. where appellant alleged that G.C. continued to harass him with nasty and unprofessional emails of accusations that he had not completed tasks and ongoing harassment of being an expert with WebTA. He asserted that G.C. made harassing remarks about his physician's note and still ordered him to bring in his laptop even though it exceeded his work restrictions. Appellant contended that the continued harassment and retaliation from G.C. had triggered his PTSD and put him in a very "vexed workplace."

By decision dated March 14, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the January 26, 2023 employment incident and/or events occurred, as alleged.

On March 24, 2023 appellant requested reconsideration.

Appellant submitted a December 14, 2022 work status note by Dr. Ganjoo Dida, a psychiatrist, who indicated that appellant was receiving treatment for worsening symptoms of depression and anxiety. Dr. Dida recommended that appellant telework four days a week until these symptoms had subsided.

In emails dated February 27 and 28, 2023, appellant alleged that G.C. continued to harass him with unprofessional and nasty emails of accusations that appellant had not completed his tasks and that he was an expert with WebTA. He also asserted that G.C. did not provide proper instructions, complained about an email that he had attempted to recall, made harassing remarks about his physician's work restrictions, ordered him to bring in his laptop despite his work restrictions, and made a sarcastic remark to him after the February 10, 2023 mediation meeting. Appellant requested that he be assigned a new supervisor.

In emails dated March 2 through 15, 2023, appellant requested that M.F. instruct G.C. and T.M. to stop their harassment and retaliatory action. He alleged that they threatened him with suspension due to a mishap email, do not follow his work restrictions, send him nasty and unprofessional emails with false accusations, and denied his requests for leave. Appellant asserted that he had experienced ongoing harassment since August 2022. He contended that this ongoing harassment had triggered his PTSD and requested that he be reassigned to a new supervisor. In a March 15, 2023 email, M.F. informed appellant that his request for a new supervisor was denied as he was just reassigned to a new supervisor within the past 60 days.

In emails dated March 6 and 7, 2023, G.C. advised appellant that his allegations could be construed as misstatements, misrepresentation of facts, and slanderous if not supported by evidence. He noted that all employees should conduct themselves professionally in the workplace and contribute to an environment free of any type of harassing behavior.

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

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ 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,⁶ that an injury was sustained in the performance of duty as alleged, and that

⁵ *Supra* note 2.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ 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.⁸

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.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.¹⁰ In the case of *Lillian Cutler*,¹¹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. 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.¹² When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.¹³ 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.¹⁴

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.¹⁵ 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

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁹ *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).

¹⁰ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

¹¹ 28 ECAB 125 (1976).

¹² *S.K.*, *supra* note 9; *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

¹³ *Lillian Cutler*, *supra* note 11; *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001).

¹⁴ *Lillian Cutler*, *id.*

¹⁵ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

evidence.¹⁶ To the extent that, disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.¹⁷ However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment did, in fact, occur.¹⁸ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on January 26, 2023 as alleged.

In his January 27, 2023 Form CA-1, appellant alleged that on January 26, 2023 he experienced numbness in his left hand and two fingers due to being subjected to conflicting instructions, unreasonable timeframes, and ongoing harassment from his supervisor. In support of his claim, he submitted a series of emails dated January 26, 2023 between himself and G.C., his supervisor. Appellant requested that G.C. provide further clarification regarding the dates for validation and certification of WebTA timecards. He alleged that his former supervisor, A.L., had instructed him that WebTA timecards needed to be submitted by COB of Thursday and Friday of the second week. G.C. advised appellant to send out email reminders in accordance with the appropriate timeframe for validating WebTA per policy as specified during appellant's timekeeper training. He also provided a weblink and requested that appellant submit written confirmation of the different guidance that he allegedly received. G.C. noted that appellant should disregard any guidance that he may have misinterpreted from A.L. as he was certain that A.L. would not have misinformed appellant. Appellant, however, has not provided any evidence that he received different guidance from A.L. regarding the timeline for certifying and validating WebTA timecards that conflicted with the instructions that he received from G.C. He has not submitted corroborative evidence in support of his allegations regarding harassment and retaliation from his supervisors. Appellant has not submitted witness statements or other documentary evidence demonstrating that the alleged harassment and retaliation occurred on January 26, 2023 as

¹⁶ *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

¹⁷ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁸ *D.G.*, Docket No. 22-0654 (issued May 11, 2023); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

¹⁹ *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

²⁰ *C.R.*, Docket No. 21-0463 (issued April 28, 2023); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

alleged.²¹ Therefore, the Board finds that he has not established a compensable employment factor with respect to the claimed harassment on January 26, 2023.²²

Accordingly, the Board finds that appellant has not established a compensable employment factor under FECA and, thus, has not met his burden of proof to establish an emotional condition in the performance of duty.

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.²³

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.²⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.²⁶ 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.²⁷

²¹ See *C.R., id.*; see also *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²² See *L.W.*, Docket No. 23-0124 (issued April 25, 2023); see also *M.E.*, Docket No. 21-1340 (issued February 1, 2023).

²³ 5 U.S.C. § 8128(a); see *A.N.*, Docket No. 20-1487 (issued March 19, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

²⁴ 20 C.F.R. § 10.606(b)(3); see *S.K.*, Docket No. 22-0248 (issued June 27, 2022); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

²⁵ *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). *Id.* at Chapter 2.1602.4b.

²⁶ *Id.* at § 10.608(a); see also *M.S.*, 59 ECAB 231 (2007).

²⁷ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

ANALYSIS -- ISSUE 2

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).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. Consequently, he was 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).²⁸

In support of his reconsideration request, appellant submitted several emails dated February 27 through March 7, 2023 where he alleged that G.C. and T.M. continued to harass him, made false accusations against him, failed to provide proper instructions and training, made sarcastic remarks towards him, and did not follow his work restrictions. These emails, however, merely reiterate appellant's previous allegations of harassment and retaliation. The Board has held that the submission of evidence, which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.²⁹

Appellant also submitted a December 14, 2022 work status note. As the underlying issue pertains to whether the January 26, 2023 incident occurred as alleged, this medical evidence is not relevant to the underlying issue. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³⁰ Therefore, for the above reasons, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).³¹

Accordingly, the Board finds that appellant has not met any of the requirements enumerated under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied his request for reconsideration without reopening the case for review on the merits.³²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty on January 26, 2023, as alleged. The Board further finds that

²⁸ *Supra* note 25; *see K.F.*, Docket No. 19-1846 (issued November 3, 2020).

²⁹ *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

³⁰ *B.P.*, Docket No. 22-0553 (issued October 21, 2022); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *E.G.*, Docket No. 18-0270 (issued August 24, 2018); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

³¹ *See D.J.*, Docket No. 21-0371 (issued November 24, 2021).

³² *See D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

OWCP properly 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 and March 14, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 16, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board