

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

V.R., Appellant	)	
	)	
and	)	Docket No. 23-1075
	)	Issued: February 28, 2024
DEPARTMENT OF THE TREASURY,	)	
INTERNAL REVENUE SERVICE, Houston, TX,	)	
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 July 26, 2023 appellant filed a timely appeal from a February 1, 2023 merit decision and a July 20, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). One-hundred eighty days following OWCP's February 1, 2023 decision was July 31, 2023. Because using August 4, 2023, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 26, 2023, rendering the appeal timely filed. *Id.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an emotional/stress-related condition in the performance of duty; 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 February 12, 2020 appellant, then a 60-year-old bankruptcy specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained emotional/stress-related conditions due to factors of her federal employment, including reviewing complex cases and communicating with the taxpayers, attorneys, and the Department of Justice.<sup>3</sup> She noted that she first became aware of her condition and realized its relation to her federal employment on May 10, 2017.<sup>4</sup>

In a development letter dated February 18, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for competition. By separate letter also dated February 18, 2020, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In a February 26, 2020 response, the employing establishment controverted appellant's claim.

Appellant subsequently submitted copies of several reasonable accommodation requests, which were denied. This included a February 21, 2017 final decision regarding her request for a new supervisor; a September 11, 2018 reasonable accommodation request for a reduction in inventory to work a GS-12 position assigned 38 to 40 cases, and a March 18, 2020 reasonable accommodation request to be reassigned to another GS-12 analyst position outside the insolvency management chain. Documentation related to the reasonable accommodation requests was submitted.

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<sup>3</sup> Appellant indicated that her work stress caused physical symptoms including severe headaches, back pain, shoulder pain, fatigue, muscle spasms, and leg pains, which resulted in difficulty walking.

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx135. On December 2, 2008 appellant previously filed an occupational disease claim (Form CA-2) alleging that she had sustained hypertension, headaches, neck pain, and fatigue due to factors of her federal employment. OWCP assigned that claim OWCP File No. xxxxxx575 and accepted it for major depression, recurrent episode, and generalized anxiety disorder. On July 19, 2012 appellant filed an occupational disease claim alleging inflamed nasal passages/sinuses and headaches as of June 21, 2012, due to exposure to dust particles at work. OWCP assigned that claim OWCP File No. xxxxxx565 and accepted it for headaches. On June 24, 2015 appellant filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx575. OWCP, however, converted the recurrence claim to a new occupational disease claim, adjudicated under OWCP File No. xxxxxx163.

A March 10, 2020 grievance regarding the denial of reasonable accommodation and documentation pertaining to appellant's Equal Employment Opportunity (EEO) claim were also submitted.

March 8, 2016, November 25, 2019, and March 12, 2020 reports from Jonathan Morris, Ph.D., a psychologist, were also provided.

By decision dated April 14, 2020, OWCP denied the claim, finding that the factual evidence of record was insufficient to establish appellant's allegations. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 18, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an April 20, 2020 statement, she alleged that she was intentionally subjected to "unwarranted" occupational stress factors by the insolvency management chain-of-command. Appellant also alleged "physical" injury based on her previous psychological stress diagnoses. In an April 21, 2020 statement, she related that she had filed a grievance on the denial of her request for reassignment and to have the total number of cases assigned reduced to a range of 38 to 40 cases. Appellant alleged that managers M.C. and P.M. were consistently devising a plan to lower appellant's performance appraisals and had intentionally subjected her to a retaliatory and hostile work environment; and she no longer wanted to be assigned to the current insolvency management chain-of-command due to continuing harassment.

OWCP received material pertaining to appellant's reasonable accommodation request for reassignment to a different GS-12 position. This included a May 26, 2020 report and an August 18, 2020 addendum from Dr. Virginia M. Weaver, a Board-certified internist and occupational medicine consultant.

In an August 14, 2020 letter, appellant stated that on August 13, 2020 she was rushed to the hospital and diagnosed with a transient ischemic attack (TIA), which she attributed to the work-related stress factors and the ongoing denials of requests for reasonable accommodation to be reassigned to the insolvency chain of command. She asserted that since 2009 management officials were aware of her diagnosed emotional conditions and alleged that their abuse of authority intentionally denied her medical treatment and caused her to suffer the August 13, 2020 mini-stroke.

In an August 13, 2020 hospital report, Dr. Harish Thakkar, an internist, diagnosed TIA and speech impairment.

OWCP also received medical evidence from Dr. Charles E. Willis, a Board-certified psychiatrist and neurologist, dated January 28 and December 2 and 3, 2020, which discussed appellant's diagnosed cervical spine sprain, lumbar spine sprain, bilateral shoulder conditions, and major depressive disorder.

By decision dated December 23, 2020, OWCP's hearing representative set aside the April 14, 2020 OWCP decision and remanded the case for further development followed by a *de novo* decision.

OWCP received a February 26, 2021 memorandum which directed appellant to report to duty *via* telework beginning March 1, 2021 and an April 6, 2021 final appeal, which denied her reasonable accommodation request.

By *de novo* decision dated April 13, 2021, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish her allegations. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 14, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. Additional factual and medical evidence regarding her reasonable accommodation requests were received along with a newspaper clipping.

By decision dated June 1, 2021, OWCP's hearing representative vacated OWCP's April 13, 2021 decision and remanded the case to OWCP for further development and issuance of a *de novo* decision.

In a July 12, 2021 reconsideration of reasonable accommodation request, the employing establishment confirmed the denial of appellant's request for reassignment as a form of reasonable accommodation. It noted that she was currently assigned 25 cases, which was well below what other specialists at the same grade level carried, and further reduction of inventory was not possible.

By *de novo* decision dated August 12, 2021, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish her allegations. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 16, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received additional evidence, including an August 16, 2021 statement, wherein appellant reiterated previous contentions concerning her prior claims. Appellant also advised that she was still in the EEO process and asserted that the employing establishment continued its abuse of its administrative and personnel responsibilities toward her. She alleged that the consistent denials of her requests for reasonable accommodation caused the ongoing emotional and stress-related conditions.

By decision dated July 22, 2022, OWCP's hearing representative modified OWCP's August 12, 2021 decision to find that appellant had not established an emotional/stress-related condition in the performance of duty. The hearing representative noted that appellant had not established any compensable employment factors. Thus, the requirements had not been met to establish an injury as defined by FECA.<sup>5</sup>

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<sup>5</sup> The hearing representative directed OWCP to administratively combine a appellant's prior claims with the present claim, OWCP File No. xxxxxx135. On July 28, 2022 OWCP administratively combined OWCP File Nos. xxxxx135, xxxxxx565, xxxxxx163, and xxxxxx575, with the latter serving as the master file.

On December 19, 2022 appellant requested reconsideration and submitted additional evidence.

By decision dated February 1, 2023, OWCP denied modification of its July 22, 2022 decision.

On July 10, 2023 appellant requested reconsideration and submitted duplicate copies of evidence previously of record.

By decision dated July 20, 2023, 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 FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>8</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

<sup>9</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>10</sup> *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>11</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

assigned work duties of the employee and are not covered under FECA.<sup>12</sup> However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>13</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>14</sup>

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.<sup>15</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>16</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.<sup>17</sup> If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.<sup>18</sup> If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.<sup>19</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty.

Appellant has alleged that management committed error and abuse with respect to various administrative/personnel matters. In particular, she claimed that the employing establishment mishandled her reasonable accommodation requests. The Board has long held that the denial of a

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<sup>12</sup> *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>13</sup> *D.T.*, *id.*; *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>14</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>15</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>16</sup> *Id.*; *see also Kim Nguyen*, 53 ECAB 127 (2001).

<sup>17</sup> *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>18</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>19</sup> *S.Z.*, *supra* note 7; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

reasonable accommodation is an administrative or personnel matter and can only be considered a compensable work factor if there is probative evidence of error or abuse.<sup>20</sup> There is no indication that the employing establishment committed error or acted abusively in these administrative/personnel matters. Therefore, appellant has not established a compensable employment factor in this regard.

Appellant also alleged in general terms that she was subjected to harassment by employing establishment officials following her reasonable accommodation requests. However, 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.<sup>21</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>22</sup> Appellant has not established, with corroborative evidence that the claimed harassment occurred as alleged. Therefore, she has not established a compensable employment factor with regard to harassment.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>23</sup>

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 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>24</sup> Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>25</sup> This section provides that the request for reconsideration must be submitted in writing and set forth arguments and contain evidence 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.<sup>26</sup>

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<sup>20</sup> See *P.L.*, Docket No. 12-1640 (issued May 13, 2013); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

<sup>21</sup> *Supra* note 15.

<sup>22</sup> *Supra* note 16.

<sup>23</sup> See *T.S.*, Docket No. 23-0213 (issued December 14, 2023); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>24</sup> 5 U.S.C. § 8128(a); see *M.A.*, Docket No. 23-0409 (issued August 25, 2023); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>25</sup> 20 C.F.R. § 10.608(a).

<sup>26</sup> *Id.* at § 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 be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>27</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>28</sup> If the request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>29</sup>

### 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).

In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered by OWCP.<sup>30</sup> Consequently, she is not entitled to further 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).<sup>31</sup>

The Board further finds that appellant has not provided relevant and pertinent new evidence not previously considered by OWCP. With her request for reconsideration, appellant resubmitted copies of evidence previously of record. The Board has held that the submission of evidence, which repeats or duplicates evidence already in the case record, does not constitute a basis for reopening a case.<sup>32</sup> Therefore, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>33</sup>

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.<sup>34</sup>

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<sup>27</sup> *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.

<sup>28</sup> *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>29</sup> *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

<sup>30</sup> *See M.C.*, Docket No. 18-0841 (issued September 13, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>31</sup> 20 C.F.R. at § 10.606(b)(3); *see T.F.*, Docket No. 22-0573 (issued March 31, 2023); *A.N.*, Docket No. 22-0617 (issued August 26, 2022).

<sup>32</sup> *See A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.R.*, Docket No. 18-0400 (issued August 24, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>33</sup> *M.A.*, Docket No. 23-0409 (issued August 25, 2023); *T.F.*, and *A.N.*, *supra* note 31.

<sup>34</sup> 20 C.F.R. § 10.608; *see M.M.*, Docket No. 20-0523 (issued August 25, 2020).



**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty. The Board further finds that OWCP properly denied her 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 20 and February 1, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 28, 2024  
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