

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 29, 2021 appellant, then a 63-year-old city carrier filed a traumatic injury claim (Form CA-1), alleging that on July 21, 2020 the employing establishment's "discrimination *etc.* create[ed] mental disorder," and that "violation [of] job offer, psychiatric violence" occurred while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx932.⁴ On the reverse side of the claim form, E.C., a customer service manager for the employing establishment, noted that appellant last worked on July 11, 2017, and was not on duty on July 21, 2020.⁵

Appellant submitted a December 20, 2020 note by Dr. Xu Z. Chen, a Board-certified psychiatrist and neurologist, who indicated that he had treated appellant since September 2020 for recurrent moderate major depressive disorder.

Appellant also submitted copies of time sheets and a May 21, 2021 statement wherein he asserted that the retaliatory and discriminatory actions by the employing establishment for the past 20 years had "damaged his life."

OWCP received a memorandum dated February 5, 2020, signed by D.P., an employing establishment management representative, and H.C., a union vice president. They indicated that the October 8, 2019 notice of removal, for the charge of continuous absence without official leave (AWOL), was issued for just cause. D.P. and H.C. noted that appellant had repeatedly refused to be interviewed and had not provided any acceptable information/documentation to explain his continued unscheduled absence.

In a witness statement dated June 12, 2020, M.T., a parcel post clerk, reported that she believed management at the employing establishment subjected appellant to harassment and discrimination. She also indicated that coworkers made negative comments about appellant's

⁴ Appellant has a previously accepted occupational disease claim (Form CA-2) under OWCP File No. xxxxxx781, which OWCP accepted for cervical spondylosis without myelopathy. The record reflects that, under OWCP File No. xxxxxx781, appellant requested to expand the acceptance of his claim to include additional emotional conditions. In a September 10, 2021 letter, it noted that appellant had also filed a separate claim under OWCP File No. xxxxxx932 for emotional conditions. OWCP informed appellant that it would not address the merits of his emotional condition claim under OWCP File No. xxxxxx781 and advised him to pursue his claim for emotional conditions under OWCP File No. xxxxxx932.

⁵ Appellant has also filed previous traumatic injury claims. Under OWCP File No. xxxxxx352, he filed a Form CA-1 on August 28, 2014 alleging that on October 24, 2013 he experienced severe right shoulder and neck pain while in the performance of duty. By decision dated November 7, 2014, OWCP denied appellant's traumatic injury claim, finding that the evidence did not establish that the employment incident occurred as alleged. Under OWCP File No. xxxxxx782, appellant filed a Form CA-1 on January 9, 2020 alleging that on January 19, 2017 he developed gastric cancer as a result of stress from work and discrimination. By decision dated February 26, 2020, OWCP denied the traumatic injury claim, finding that the evidence did not establish that the employment incident occurred as alleged. It has administratively combined OWCP File Nos. xxxxxx781, xxxxxx352, xxxxxx782, and xxxxxx932, with OWCP File No. xxxxxx781 serving as the master file.

disability-related injury and looked down on him, but management did not help him to resolve the issue. M.T. contended that there was misconduct by management and that if it was not discrimination, it was harassment.

In an August 2, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence necessary and provided a questionnaire for his completion. In a similar letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of his statements. It afforded both parties 30 days to submit the requested information.

The employing establishment responded to OWCP's development letter on August 23, 2021. It indicated that appellant had returned to limited-duty work on July 11, 2013, for three hours per day, and stopped work completely on February 15, 2014.

In an August 17, 2021 statement, E.C., a customer services manager for the employing establishment, alleged that the witness statement of M.T. was false. He noted that M.T.'s shift ended at 3:00 p.m. daily and appellant's shift started at 3:30 p.m., so M.T. could not have witnessed anything that involved appellant.

In an August 17, 2021 statement, W.H. noted that eight years ago he was the manager of the employing establishment. He indicated that he obtained appellant's work restrictions and assigned him a job within his work restrictions. W.H. reported that after a couple of weeks of work, appellant claimed that the scanner was too heavy for him, and he stopped work. He noted that he subsequently issued appellant a seven-day suspension for his attendance.

In a statement dated August 18, 2021, T.L., a shop steward at the employing establishment, alleged that after the year 2000 appellant hardly came to work. He asserted that M.T. could not have witnessed the claimed management abuse against appellant because she was not in the office.

On September 1, 2021 OWCP received appellant's response to its development letter. Appellant indicated that he was attaching statements, including evidence of "psychiatric violence" by the employing establishment, a narrative report by a psychiatrist, and a second opinion psychiatric evaluation report.

By decision dated September 9, 2021, OWCP denied appellant's emotional condition claim, finding that he had not established that the specific incident(s) occurred, as alleged. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted several disciplinary letters issued by the employing establishment, including: a July 30, 2013 letter notifying appellant of a pre-disciplinary interview scheduled for August 6, 2013; an October 25, 2013 letter of warning; a November 13, 2013 letter informing appellant that he had been absent in excess of three days; and a November 20, 2013 letter implementing seven days of suspension from duty. The letters indicated that appellant was marked AWOL for several consecutive days.

OWCP also received notice of removal letters dated October 8, 2019, and February 5, 2020, which indicated that appellant was removed from his position at the employing establishment, effectively immediately, due to continuous absence without official leave.

Appellant submitted Employing Establishment Opportunity (EEO) complaints of discrimination dated January 27, 2014, and June 17, 2000, and a step A grievance form dated February 5, 2020.

On September 17, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 11, 2022.

Appellant subsequently submitted a May 20, 2021 psychiatric evaluation report, wherein Dr. Chen indicated that appellant was seen for initial psychiatric assessment on September 6, 2020 for symptoms of depressed mood, negative thinking, sleeping disturbances, preoccupied thoughts, and somatic complaints (shoulder and arm pain). He indicated that appellant faced years of discrimination, harassment, retaliation, and abuse by his supervisor for being someone with a disability, and was now unable to work due to the severity of his injuries. Dr. Chen opined that appellant's presenting symptoms were all directly attributed to his work-related injuries.

In an August 8, 2021 letter, Dr. Chen indicated that appellant had been attending psychiatric treatment in his office since September 6, 2020 for the treatment of recurrent moderate major depressive disorder. He noted that appellant received individual weekly therapy sessions and medication management.

By decision dated March 18, 2022, OWCP's hearing representative affirmed the September 9, 2021 decision with modification, finding that appellant had failed to establish a compensable employment factor.⁶

On September 6, 2022 appellant, through his representative, requested reconsideration. Counsel outlined the procedural history of appellant's multiple claims and noted that OWCP's hearing representative indicated in the March 18, 2022 decision that, given appellant's several claim files involving alleged emotional conditions, OWCP should administratively combine the current claim, OWCP File No. xxxxxx932, with OWCP File Nos. xxxxxx781 and xxxxxx782. He requested that OWCP further develop appellant's case and issue a *de novo* decision.

By decision dated September 22, 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 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.⁷

⁶ The hearing representative also instructed OWCP to combine the current claim, OWCP File No. xxxxxx932, with OWCP File Nos. xxxxxx781 and xxxxxx782.

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

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.⁸

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁹ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁰ 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.¹¹ The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹² and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹³

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 September 6, 2022 appellant, through his representative, filed a timely request for reconsideration of a March 18, 2022 decision.¹⁴ Appellant's representative outlined the procedural history of appellant's multiple claims, and noted that OWCP's hearing representative indicated in the March 18, 2022 decision that, given appellant's several claim files involving alleged emotional conditions, OWCP should administratively combine the current claim, OWCP File No. xxxxxx932, with OWCP File Nos. xxxxxx781 and xxxxxx782. Appellant's representative requested that OWCP further develop appellant's case and issue a *de novo* decision. The Board finds, however, that he neither established that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

⁸ 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁹ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

¹⁰ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹³ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

¹⁴ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

On reconsideration, appellant did not submit any new evidence. The underlying issue of the case is factual in nature, *i.e.*, whether appellant established a compensable employment factor in connection with his emotional condition claim, and he has not submitted relevant and pertinent new evidence in connection with his reconsideration request. Therefore, appellant is not entitled to further 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.

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 September 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2024
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