

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, CEDAR CITY POST
OFFICE, Cedar City, UT, Employer**

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**Docket No. 24-0226
Issued: July 17, 2024**

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 2, 2024 appellant filed a timely appeal from a November 21, 2023 merit decision and a November 30, 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 to consider the merits of this case.³

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Appellant asserted that OWCP only used one piece of evidence and did not review all of the evidence he submitted. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the November 30, 2023 decision, OWCP received additional evidence. 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 that appellant sustained an emotional condition on July 29, 2023 in the performance of duty; 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 September 7, 2023 appellant, then a 27-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2023, he sustained mental distress due to being overworked in the workplace while in the performance of duty. He stopped work that same day.

In an August 29, 2023 email, Daniel Eldridge, a licensed clinical social worker, noted that appellant had a mental health condition that limited his major life activities, including concentrating, thinking, interacting with others, and communicating. He explained that as a result, appellant was temporarily unable to work and needed a leave of absence for treatment and recovery commencing on July 26, 2023. Mr. Eldridge noted that appellant would be able to return to work on September 30, 2023.

In a September 18, 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 incident, and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. No response was received.

In a follow-up letter dated October 17, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish the claim. It noted that he had 60 days from the September 18, 2023 development letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. It thereafter received additional evidence.

In an August 1, 2023 clinical note, Mr. Eldredge related that appellant reported difficulty coping with depressive and anxiety symptoms due to feeling overwhelmed and stressed with his work, particularly his work schedule and lack of time for himself, romantic relationships, and "having a life." He noted that appellant reported that he worked six days per week, 13-hour shifts, for the past two and a half years. Mr. Eldredge diagnosed major depressive disorder, single episode, severe, and generalized anxiety disorder.

In an August 1, 2023 continuity of care document, Mr. Eldredge repeated his diagnosis of major depressive disorder, single episode, severe, and generalized anxiety disorder.

In a November 1, 2023 discharge summary, Eric Butters, a nurse practitioner, noted that appellant recently experienced the loss of a long-term relationship which caused an episode of severe depression. A partial copy of November 1, 2023 clinic notes, from Mr. Butters, was also received.

By decision dated November 21, 2023, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It explained that he had not provided a factual

statement outlining what he was claiming and, therefore, had not provided a factual basis to establish his claim.

On November 24, 2023 appellant requested reconsideration. He contended that he had submitted additional evidence which was not reviewed by OWCP and attached a complete copy of the November 1, 2023 clinic notes from Mr. Butters, a nurse practitioner.

By decision dated November 30, 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 1

An employee seeking benefits under FECA⁴ 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 of FECA, that an injury was sustained 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. 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.⁵

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment incident is causally related to his or her emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.⁷ 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.⁸

⁴ *Supra* note 2.

⁵ *See A.D.*, Docket No. 21-0639 (issued October 7, 2021); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁶ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

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).

⁸ *Id.*

Administrative and personnel matters, although generally related to employment, are administrative functions of the employer, rather than the regular or specially-assigned work duties of the employee and are not covered under FECA.⁹ 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.¹⁰ 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.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that appellant sustained an emotional condition on July 29, 2023 in the performance of duty.

Appellant has not sufficiently explained how the claimed injury occurred. In his Form CA-1, he alleged in vague terms that he sustained mental distress due to being overworked in the workplace. On September 18 and October 17, 2023 OWCP advised appellant of the type of additional evidence needed, including a detailed description of the implicated work factors. It provided a questionnaire for his completion.

As appellant did not respond to the request for factual information, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹⁶ By failing to sufficiently describe the employment factors and/or circumstances

⁹ See *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ See *J.W.*, *id.*; *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *J.W.*, *id.*; *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *M.V.*, Docket No. 22-0227 (issued March 28, 2023); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 12.

¹⁵ *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹⁶ See *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *L.A.*, Docket No. 17-0138 (issued April 5, 2017); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

surrounding his alleged condition, he has not established that an emotional condition occurred in the performance of duty.¹⁷

The Board notes that, because appellant has not established the first component of fact of injury, it is unnecessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to an alleged employment incident.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 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.¹⁹

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or 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.²⁰

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²¹ If it chooses to grant reconsideration, OWCP reopens and reviews the case on its merits.²² If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration.²³

¹⁷ *Supra* note 9.

¹⁸ *M.S.*, *supra* note 16; *see R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed incident occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

¹⁹ 5 U.S.C. § 8128(a); *see L.J.*, Docket No. 22-0348 (issued April 28, 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).

²⁰ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *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).

²¹ *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.

²² *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

²³ *Id.* at § 10.608(b); *S.K.*, Docket No. 22-0248 (issued June 27, 2022); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *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).

On November 24, 2023 appellant timely requested reconsideration, and contended that he had submitted additional evidence which was not reviewed by OWCP. However, his allegations regarding the medical evidence of record do not establish that OWCP erroneously applied or interpreted a specific point of law, nor do they 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 the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant submitted a completed copy of the clinic notes signed by Mr. Butters, a nurse practitioner. However, the underlying issue was factual in nature. The Board has held that the submission of evidence or argument which does not address the underlying issue involved does not constitute a basis for reopening a case.²⁴ 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, thus, 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 appellant has not met his burden of proof to establish an emotional condition in the performance of duty. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

²⁴ *A.G.*, Docket No. 23-0045 (issued February 15, 2024); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

ORDER

IT IS HEREBY ORDERED THAT the November 21 and 30, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 17, 2024
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