

FACTUAL HISTORY

On February 21, 2024 appellant, then a 43-year-old city delivery specialist, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety and depression due to factors of her federal employment. She explained that she was charged with absence without leave (AWOL) and scheduled for a predisciplinary interview after she failed to notify management that she would require additional time off work, beyond the leave she had been previously approved due to a death in her family. Appellant also related that she experienced an anxiety attack on September 27, 2022 when she was instructed by A.G., an employing establishment postmaster, to report to work. She noted that she first became aware of her condition and realized its relationship to her federal employment on August 19, 2022. On the reverse side of the claim form, A.L., an employing establishment supervisor, noted that appellant was working a temporary detail assignment that ended and, due to restrictions from a prior work-related injury, she was assigned a modified-duty position.

Appellant sought treatment from Hazel Mitchell, a nurse practitioner, on September 22 and October 6, 2022 and February 22, 2023. In a March 4, 2024 report, Dr. Thomas Fitzgerald, a Board-certified psychiatrist, diagnosed generalized anxiety disorder and recurrent major depressive disorder. He related that appellant attributed her diagnosed conditions to an August 9, 2023 employment injury and that in September 2023 she experienced a panic attack while at work.

In a development letter dated March 5, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, provided a questionnaire for her completion, and provided her 60 days to respond. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statement and afforded 30 days to respond.

On March 20, 2024 the employing establishment responded to OWCP's development letter and recounted that appellant had failed to report absences, that her supervisor had followed the correct procedure scheduling a in pre-disciplinary interview, and that this action was an administrative matter. In a March 11, 2024 statement, A.G., the postmaster, related that appellant accepted a modified position at a neighboring post office on September 27, 2022 as there was no work available within her restrictions at the date-of-injury location. She initially accepted the position but an hour after working the position, she called A.G. and related that "she was crying and just couldn't go in." A.G. explained that she could not remain in her car as she was "on the clock." She directed appellant to report to her duty station and complete a leave request. In a statement dated March 26, 2024, A.L. explained that appellant had requested leave on August 15, 2022 due to a death in the family, but did not report her further absences until August 19, 2022 when A.L. informed her that she was considered AWOL. She conducted an investigative interview on August 31, 2022, but did not pursue corrective or disciplinary action against appellant.

In an April 29, 2024 report, Dr. Fitzgerald repeated his diagnoses.

By decision dated July 11, 2024, OWCP denied appellant's occupational disease claim, finding that she had not established any compensable factors of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 6, 2024 appellant requested reconsideration. She provided a September 6, 2024 report from Dr. Fitzgerald where he repeated his prior findings and conclusions.

By decision dated September 10, 2024, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 timely filed, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁶ However, disability is not compensable when it results from factors such

² *Supra* note 1 .

³ *See R.B.*, Docket No. 21-0962 (issued February 23, 2023); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *See A.M., id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.⁷

Administrative and personnel matters, although generally related to the employee's 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.⁸ Where, however, the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that she sustained an emotional/stress-related condition in the performance of duty, as alleged.

Appellant did not attribute her condition to the performance of her regularly or specially assigned duties under *Cutler*.¹⁰ Rather, she attributed her condition to administrative or personnel matters.

Appellant alleged that she developed an emotional condition due to handling of leave and disciplinary issues. In *Thomas D. McEuen*,¹¹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA, absent a showing of error or abuse, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.¹² However, the Board has also 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.¹³ 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.¹⁴

Appellant specifically alleged that her disciplinary action and her request for leave on September 27, 2022 were mishandled by management. Appellant further alleged that on

⁷ *Lillian Cutler, id.*

⁸ *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹⁰ *Supra* note 6.

¹¹ *Supra* note 8. *See also S.M.*, Docket No. 23-1196 (issued July 7, 2024); *R.C.*, Docket No. 22-1033 (issued August 17, 2023).

¹² *See C.J.*, Docket No. 19-1722 (issued February 29, 2021); *Helen Allen*, 47 ECAB 141 (1995).

¹³ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁴ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

September 27, 2022 she informed A.G. that she was crying and vomiting, but that her postmaster still directed her to report to work. The handling of leave requests and attendance matters relates to administrative or personnel management actions.¹⁵ The Board has further held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.¹⁶ In the instant case, the Board finds that appellant has not established error or abuse on the part of the employer with regard to the entry of AWOL status and the handling of appellant's need for leave on September 27, 2022. Therefore, she has not established a compensable employment factor with respect to these personnel matters.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.¹⁷

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.¹⁸

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.¹⁹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁰ If it chooses to grant reconsideration, it reopens

¹⁵ *S.M.*, *supra* note 10; *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

¹⁶ *S.M.*, *supra* note 10; *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *B.S.*, Docket No. 19-0378 (issued July 10, 2019).

¹⁷ *See T.S.*, Docket No. 23-0213 (issued December 14, 2023); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁸ 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).

¹⁹ 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).

²⁰ 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.

and reviews the case on its merits.²¹ 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.²² The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁴

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).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by OWCP.²⁵ Consequently, appellant was not entitled to a 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).²⁶

The underlying issue in this case is whether appellant submitted sufficient evidence to establish a compensable factor of employment. This is a factual issue, which must be addressed by pertinent new and relevant factual evidence.²⁷ Along with her reconsideration request, appellant submitted a September 6, 2024 report from Dr. Fitzgerald. However, this report is substantially similar to previously submitted reports by Dr. Fitzgerald. The Board has held that medical evidence that either duplicates or is substantially similar to evidence previously of record does not constitute a basis for reopening a case.²⁸ Thus, appellant is not entitled to a review of the merits of her 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.

²¹ *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

²² *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).

²³ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁴ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

²⁵ *Supra* note 19.

²⁶ *Id.* *See also G.T., id.*; *T.G.*, Docket No. 18-1064 (issued April 26, 2019).

²⁷ *See G.T.*, Docket No. 21-1276 (issued September 8, 2022); *A.M.*, Docket No. 21-0603 (issued November 10, 2021); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

²⁸ *See L.E.*, Docket No. 22-0004 (issued April 14, 2023); *C.B.*, Docket No. 22-0144 (issued March 16, 2023); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional/stress-related condition in the performance of duty, as alleged. The Board further finds that OWCP properly denied appellant's 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 11 and September 10, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 12, 2024
Washington, DC

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

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

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