

claim for compensation for the period September 9, 2008 through January 17, 2009. On July 10, 2009 it denied compensation from January 18 through June 10, 2009. On September 25, 2009 OWCP vacated the February 17, 2009 decision and remanded the case for further development. In an October 9, 2009 decision, it denied appellant's claim for compensation for the period beginning September 9, 2008. OWCP also denied his claim for herniated discs at L4-L5 and L5-S1. On November 14, 2009 appellant accepted a modified job offer as a modified mail handler. By decision dated April 13, 2010, a hearing representative affirmed the October 9, 2009 decision.

In a January 20, 2010 report, Dr. Timothy Morley, an osteopath, provided restrictions for work to include no extreme temperature, no dock work and breaks taken off the work floor. He indicated that appellant could work 8 to 10 hours.

In a March 11, 2011 report, Dr. William N. Grant, an attending Board-certified internist, noted appellant's history of injury and treatment. He diagnosed multiple symptoms including bilateral carpal tunnel syndrome, pain in the soft tissues of the limb, skeletal disorder in the shoulder, disc order of cervical region, lumbar disc disorder, lumbar strain and fibromyalgia. In a separate report also dated March 11, 2011, Dr. Grant advised that appellant was able to return to work on Thursday, March 31, 2011. In reports dated March 31 to May 16, 2011, he advised that appellant could return to work with restrictions.

On May 17, 2011 appellant filed a claim for recurrence of disability on March 31, 2011. He noted that the original injury occurred on November 3, 2007 and stated that his condition worsened with time. Appellant was told by his supervisor that no work was available due to his "conditions."

In a letter dated May 20, 2011, the employing establishment notified appellant that there was no work available for him within the operational needs of the service. Appellant was advised about the National Reassessment Program (NRP).

By letter dated May 31, 2011, OWCP informed appellant of the evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a report dated July 25, 2011, Dr. Grant noted appellant's history of injury and treatment. He advised that appellant was incapable of working unrestricted duties.

By decision dated August 12, 2011, OWCP denied the claim for a recurrence on March 31, 2011.

On August 17, 2011 appellant requested a hearing, which was held on November 16, 2011. During the hearing, he noted that he had a prior, service-connected, 40 percent impairment to his back. Appellant indicated that, on March 31, 2011, he was told not to work because there was no work available. He testified that he had not worked since 2007.

By decision dated January 20, 2012, OWCP's hearing representative affirmed the August 12, 2011 decision finding that the medical evidence did not establish that his continuing restrictions were due to the 2007 work injury as the weight of the medical evidence showed that the 2007 soft tissue injury had resolved.

By letter dated March 1, 2012, appellant requested reconsideration and submitted additional evidence. He reiterated his explanation that the only reason he filed his recurrence was because he was not allowed to work and the sole reason for filing his claim for a recurrence. Appellant indicated that there was no other incident other than this fact on March 31, 2011. He indicated that he had not returned to work in a full-duty capacity since the filing of his claim and he maintained the same restrictions which were permanent.

OWCP received copies of previously submitted reports, including a copy of the November 14, 2009 modified job offer and a copy of the January 20, 2010 report from Dr. Morley. A March 30, 2010 duty status report from Dr. Morley also indicated that appellant could work with restrictions but that he should not be exposed to extreme temperature or dock work. Dr. Morley recommended that breaks be taken off the work floor. He indicated that appellant could work 8 to 10 hours. OWCP received a copy of Dr. Grant's March 11 and 31 and May 16, 2011 reports in which Dr. Grant provided work restrictions. It also received a copy of the May 16, 2011 report from Dr. Grant, who advised that appellant could return to work with restrictions on May 31, 2011. OWCP also received a copy of his July 25, 2011 report. In a June 21, 2011 report, Dr. Grant diagnosed bilateral carpal tunnel, pain, depression, myalgia, disorder of bone and cartilage, etc.

OWCP received a copy of a previously submitted letter dated May 20, 2011 from the employing establishment addressed to appellant regarding NRP. In a letter dated January 18, 2012, the employing establishment addressed appellant's absences from work. Appellant was advised to submit documentation to support his absences.

By decision dated March 19, 2012, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

Under section 8128(a) of Federal Employees' Compensation Act,¹ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [OWCP] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [OWCP]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [OWCP].”²

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.³

ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP.

Appellant disagreed with the denial of his claim and requested reconsideration on March 1, 2012. In support of his March 1, 2012 request for reconsideration, he submitted a statement in which he alleged that the only reason he filed his recurrence was because he was not allowed to work and the sole reason for filing his claim for a recurrence. Appellant indicated there was no other incident other than this fact on March 31, 2011. He indicated that he had not returned to work in a full-duty capacity since the filing of his claim and he maintained the same restrictions which were permanent. The Board notes that these arguments are similar to those appellant presented during the hearing on November 18, 2011. Appellant also submitted copies of previously submitted reports. They included a copy of the November 14, 2009 modified job offer and a copy of the January 20, 2010 report from Dr. Morley. Appellant also provided a March 30, 2010 duty status report, which was essentially duplicative of Dr. Morley's January 20, 2010 report, which indicated that appellant could work with restrictions but that he should not be exposed to extreme temperature or dock work. OWCP also received a copy of Dr. Grant's March 11 and 31, May 16 and July 25, 2011 reports and a copy of a previously submitted letter dated May 20, 2011 from the employing establishment addressed to appellant regarding NRP. The Board finds that submission of these reports did not require reopening his case for merit review because these reports repeat or duplicate reports that were previously of record. Evidence that is duplicative does not constitute relevant and pertinent new evidence.⁴ Therefore, appellant has not established a basis for reopening his case.

In a June 21, 2011 report, Dr. Grant diagnosed bilateral carpal tunnel, pain, depression, myalgia, disorder of bone and cartilage, etc. However, he did not offer any opinion regarding appellant's claimed recurrence. Therefore, this report is not relevant. Likewise, in a letter dated January 18, 2012, the employing establishment addressed appellant's absences from work. However, this is not relevant to his claim for a recurrence on March 31, 2011. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

Appellant therefore did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit

³ *Id.* at § 10.608(b).

⁴ *See D.K.*, 59 ECAB 141 (2007) (the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case).

⁵ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

On appeal, appellant submitted new evidence and argued the merits of his case. The Board noted above that it only has jurisdiction over OWCP's March 19, 2012 nonmerit decision which denied his request for reconsideration and therefore is precluded from conducting a merit review. The Board has no jurisdiction to review this evidence for the first time on appeal.⁶

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁶ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).