

FACTUAL HISTORY

On April 6, 2011 appellant, then a 57-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging injuries to his right arm and right leg while pushing a cart in the performance of duty on March 31, 2011.

By decision dated June 16, 2011, OWCP denied the claim on the basis that the evidence submitted was not sufficient to establish a firm medical diagnosis in connection with the claimed incident.

On June 27, 2011 appellant, through his representative, requested reconsideration and submitted a June 13, 2011 report by Dr. David A. McGuire, a Board-certified orthopedic surgeon, who obtained a history that appellant injured himself on March 31, 2011 while on the job when he was pushing a heavy file cart. He indicated that appellant had a mild stroke, which was diagnosed by a magnetic resonance imaging scan, after the March 31, 2011 event. Dr. McGuire diagnosed right knee medial and lateral meniscus tears and opined that the diagnoses were related directly to the March 31, 2011 employment incident.

In a June 14, 2011 report, Dr. Loren J. Jensen, a Board-certified orthopedic surgeon, diagnosed right shoulder impingement and opined that it was inextricably linked to appellant's cerebral vascular accident (CVA) or stroke. Upon examination, he found a significant restriction of motion, in part due to impingement and part due to muscular weakness from the stroke. On June 23, 2011 Dr. Jensen indicated that appellant was three months from his injury and stroke. Upon examination, he found symmetric range of motion, with most of the stiffness being stroke related, and no obvious rotator cuff weakness, though some generalized stroke weakness.

By decision dated November 10, 2011, OWCP modified the June 16, 2011 decision to find that the evidence of record failed to establish that the March 31, 2011 incident occurred at the time, place and in the manner alleged.

On March 20, 2012 appellant, through his representative, requested reconsideration. He submitted medical reports from the Veterans Administration Health Center System dated February 15 through March 2, 2012.

By decision dated April 20, 2012, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit pertinent new and relevant evidence or show that OWCP erroneously applied or interpreted a point of law not previously considered. It noted that the evidence he submitted was irrelevant and dated nearly one year after the date of injury.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review

an award for or against compensation.² OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁶

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

OWCP denied appellant's claim of injury on March 31, 2011 finding that he did not establish the claimed traumatic incident. In support of his March 20, 2012 reconsideration request, appellant submitted medical reports from Veterans Administration Health Center System dated February 15 through March 2, 2012. The Board finds that submission of these documents did not require reopening appellant's case for merit review as they failed to address the relevant issue of whether the March 31, 2011 incident occurred at the time, place and in the manner alleged. Therefore, they do not constitute relevant and pertinent new evidence and are not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did he submit any relevant and pertinent new evidence not previously

² 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

³ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ 20 C.F.R. § 10.606(b)(3). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁵ 20 C.F.R. § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ See *A.L.*, *supra* note 4. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁸ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

considered. The Board finds that appellant did not meet any of the necessary requirements and is not entitled to further merit review.⁹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ See *L.H.*, 59 ECAB 253 (2007).