

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 14, 2006 appellant, then a 48-year-old painter helper, filed a traumatic injury claim alleging that he injured his knee in the performance of duty. On April 10, 2006 OWCP accepted his claim for strain/strain of the medial collateral ligament on the left.

OWCP obtained appellant's work restrictions on June 9, 2009, which included limitations in walking, standing, twisting, bending, stooping, squatting, kneeling, climbing and operating a motor vehicle. Appellant was limited to moving up to 20 pounds. On December 7, 2009 Dr. Rama T. Pathi, an attending physician and Board-certified orthopedic surgeon, opined that appellant could perform light-duty work with no bending, squatting or climbing.

On May 7, 2010 appellant's vocational rehabilitation counselor formulated a plan for training at the Security Officers' Training Academy (SOTA) to prepare him for a position as a security guard or surveillance system monitor. On August 7, 2010 the vocational rehabilitation counselor notified OWCP that appellant did not report to school as scheduled.

In a letter dated June 10, 2010, OWCP advised appellant to cooperate with vocational rehabilitation efforts by undergoing a training program in security/surveillance monitoring. It allowed him 30 days to cooperate or face the reduction of his compensation based on his wage-earning capacity had he completed the training program.

Appellant responded on June 16, 2010 and stated that he was not refusing to cooperate, but felt that he could not perform the duties of a security guard but could work as a security/surveillance monitor.

In a note dated August 9, 2010, Dr. Pathi indicated that appellant could perform light-duty work and avoid bending, kneeling, squatting and climbing.

By decision dated September 9, 2010, OWCP reduced appellant's compensation benefits effective September 26, 2010 due to his failure to undergo vocational rehabilitation as directed.

In a note dated September 20, 2010, the SOTA stated that the school did not offer any type of security/surveillance monitoring training.

Dr. Pathi completed a note dated September 23, 2010 and opined that appellant could not work as a security guard, but could work as a security surveillance monitor.

In a note dated March 14, 2011, Dr. Pathi repeated his conclusions and limitations.

Appellant requested an oral hearing before an OWCP hearing representative.

By decision dated May 2, 2011, the hearing representative found that appellant had not established good cause for failing to undergo the scheduled training and that OWCP properly reduced his compensation benefits.

Appellant resubmitted a report dated June 21, 2007 from Paul A. Stanton, M.D., finding that he could perform light duty with restrictions as well as Dr. Pathi's September 23, 2010 report.

Dr. Pathi completed notes dated April 11, June 22, July 22, August 29, September 30 and November 11, 2011, January 4 and February 1, 2012 and stated that appellant could perform light-duty work with no bending, climbing or kneeling. He further stated that appellant should avoid long walking and standing.

Appellant, through his attorney, requested reconsideration on February 27, 2012. He stated that he was submitting a letter from the SOTA and a vacancy job posting that was not previously considered. Appellant resubmitted a note dated September 20, 2010 which stated that there was no monitoring training offered. He submitted an anticipated vacancy announcement and indicated that he was interested in returning to work as a supply technician.

By decision dated March 19, 2012, OWCP declined to reopen appellant's claim for consideration of the merits finding that he had not submitted any relevant new evidence in support of his February 27, 2012 request for reconsideration.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.² Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁴

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

² 5 U.S.C. §§ 8101-8193, 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.608.

⁵ *M.E.*, 58 ECAB 694 (2007).

ANALYSIS

OWCP reduced appellant's compensation benefits based on his refusal to cooperate with vocational rehabilitation services on September 9, 2010 and the hearing representative affirmed this decision on May 2, 2011.

The Board does not have jurisdiction over the May 2, 2011 OWCP decision. The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) requiring OWCP to reopen the case of review of the merits of his claim. In his February 27, 2012 request for reconsideration, he did not identify or show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not attempt to advance a new and relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(2) as he resubmitted documents included in the record at the time of OWCP's May 2, 2011 decision. Appellant resubmitted a June 21, 2007 report from Dr. Stanton, finding that he could perform light duty with restrictions as well as Dr. Pathi's September 23, 2010 report. As noted above, medical reports which are repetitive are not sufficient to require OWCP to reopen his claim for consideration of the merits. Appellant submitted a series of notes from Dr. Pathi dated April 11, June 22, July 22, August 29, September 30 and November 11, 2011, January 4 and February 1, 2012 which did not contain new medical evidence or work restrictions. These reports were duplicative of evidence already included in the record and not sufficient to require OWCP to reopen his claim.

Appellant also resubmitted the September 20, 2010 note from his proposed school. The hearing representative considered this note in reaching his decision on May 2, 2011. Appellant submitted a vacancy announcement and stated that he wished to return to work. This document is irrelevant as it does not address the central issue of whether he offered good cause for failing to comply with the requirements of his vocational rehabilitation program.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on March 19, 2012 as he failed to meet any of the criteria for a merit review.

ORDER

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

Issued: November 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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