

because of the pain. On the claim form, the employing establishment controverted the claim on the basis that “employee was not working at this base when this happened” and “employee did not explain in sufficient detail cause of injury.” There is no indication that appellant stopped work. No evidence was provided with the claim form.

In a letter dated June 12, 2008, the Office advised appellant of the factual and medical evidence needed to establish his claim and allowed 30 days for the submission of evidence. It asked that appellant provide a detailed description as to how his injury occurred and that he have his attending physician submit a detailed, narrative medical report that included a history of injury, a firm diagnosis and an explanation regarding how the condition diagnosed was believed to have been caused or aggravated by the May 30, 2008 incident. The Office additionally requested, in a letter dated June 12, 2008, that the employing establishment clarify their controversion of the claim and provide additional information regarding the circumstances of the alleged injury on May 30, 2008. No additional information was received.

By decision dated July 16, 2008, the Office denied appellant’s claim on the grounds that fact of injury was not established. It found that appellant did not submit clarifying factual information to support that the May 30, 2008 work event occurred as alleged and that no medical evidence was submitted which provided a diagnosis related to the claimed injury.

On August 18, 2008 appellant requested reconsideration. In a July 16, 2008 letter, appellant indicated that the date of injury was incorrectly entered by his supervisor. He stated that his original date of injury was January 1, 1991 while he was employed at McClellan Air Force Base, California, in the aircraft corrosion and paint shop. Appellant noted that after his first surgery for carpal tunnel syndrome, he had a second opinion evaluation. Appellant resubmitted a copy of his May 30, 2008 CA-1 form.

By decision dated September 6, 2008, the Office denied appellant’s request for reconsideration of the merits as he had not submitted any new evidence or argument with his request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing 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 the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

Section 10.5(ee) of Office regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or

¹ 5 U.S.C. §§ 8101-8193.

² *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

shift.³ To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. An employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

ANALYSIS -- ISSUE 1

The Board finds that the evidence is insufficient to establish that appellant sustained an injury to his wrists on May 30, 2008 while in the performance of duty.

The only evidence submitted, the Form CA-1, discusses only that appellant felt pain in his wrists which radiated to other areas in his arms. There is no mention or discussion of what work factor(s) appellant believed caused the alleged injury to his wrists. Appellant also did not identify a particular medical condition alleged to have been caused by his employment. Additionally, the employing establishment challenged the claim on the grounds that appellant was not working at that base when the injury happened. In a June 12, 2008 letter, the Office advised appellant of the evidence needed to establish his claim and provided the opportunity to provide the necessary evidence, but he did not timely respond to the Office's request for additional information. While an employee's statement alleging that an incident or exposure occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence, appellant has not provided a comprehensive statement identifying what incidents of employment on May 30, 2008 gave rise to the claimed injury.⁵ Because the record is devoid of the necessary factual evidence surrounding the alleged May 30, 2008 injury, appellant has not met his burden of proof to establish that a particular incident occurred on that date as alleged. Furthermore, appellant did not submit any medical evidence addressing how any particular May 30, 2008 employment incident caused or aggravated a diagnosed medical condition.

For these reasons, appellant did not meet his burden of proof to establish his claim.

LEGAL PRECEDENT -- ISSUE 2

The Act⁶ provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁷ The employee shall exercise

³ 20 C.F.R. § 10.5(ee); *see Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *B.B.*, 59 ECAB ____ (Docket No. 07-1402, issued December 6, 2007).

⁶ 5 U.S.C. § 8101 *et seq.*

⁷ *Id.* at § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.⁸

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁹

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹⁰ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

Appellant's August 18, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also did not submit relevant and pertinent new evidence not previously considered by the Office. His resubmission of his CA-1 form, which had been previously received and reviewed by the Office is cumulative and duplicative in nature. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.¹² Appellant mentioned that his original date of injury was January 1, 1991 while he was employed at McClellan Air Force Base, California. This information, while new, is not relevant to the issue of whether appellant sustained an injury in the performance of duty on May 30, 2008. Appellant did not otherwise provide any clarifying evidence relevant to the underlying reason his claim was denied, his failure to sufficiently describe how particular employment factors caused his claimed injury on May 30, 2008.

⁸ 20 C.F.R. § 10.605.

⁹ *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

¹⁰ 20 C.F.R. § 10.607(a). See *Joseph R. Santos*, 57 ECAB 554 (2006).

¹¹ 20 C.F.R. § 10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his August 18, 2008 request for reconsideration.¹³

ORDER

IT IS HEREBY ORDERED THAT the September 8 and July 16, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 8, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ The record contains evidence received after the Office issued the September 8, 2008 decision and appellant also submitted new evidence with his appeal. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office with a request for reconsideration under 5 U.S.C. § 8128.