

<sup>2</sup> For final adverse decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2). For final adverse OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e).

## **FACTUAL HISTORY**

Appellant's August 23, 2006 traumatic injury claim was accepted for left rotator cuff syndrome; disorder of the bursae and tendons in the left shoulder region; and left shoulder strain. OWCP terminated his medical and compensation benefits by decision dated May 7, 2007 on the grounds that he had no disability or residuals related to his accepted injury. In a March 23, 2010 decision, it denied appellant's request for a schedule award, finding that the medical evidence was insufficient to establish that he had a permanent partial impairment causally related to the accepted conditions.

On March 28, 2010 appellant requested a telephonic hearing. He submitted a July 5, 2010 report and permanent impairment worksheet from Dr. Lev Aminov, a Board-certified internist, who provided examination findings; diagnosed derangement of the left shoulder and left upper extremity; and opined that appellant had a 14 percent permanent impairment of his left upper extremity.

By decision dated August 10, 2010, an OWCP hearing representative affirmed the March 23, 2010 decision denying appellant's entitlement to a schedule award.

On January 11, 2011 appellant, through his representative, requested reconsideration. Counsel stated that the request was based on all of the necessary medical and factual evidence that had been submitted and contended that the March 23, 2010 decision was contrary to fact and law. He indicated that he was submitting a report from Dr. Aminov that established that appellant had permanent impairment to his left upper extremity.

Appellant submitted a copy of Dr. Aminov's July 5, 2010 report, which was previously received and reviewed by OWCP.

By decision dated January 24, 2011, OWCP denied appellant's request for reconsideration, finding that the evidence presented was insufficient to warrant a merit review.

On appeal, counsel contends that the January 24, 2011 decision is contrary to fact and law.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> OWCP 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

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, 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) constitute relevant and pertinent new evidence not previously considered by OWCP.”<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

The Board has held that the submission of evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case.<sup>7</sup>

### ANALYSIS

By decision dated August 10, 2010, an OWCP hearing representative affirmed a March 23, 2010 decision denying appellant’s request for a schedule award. The issue is whether the evidence submitted in support of appellant’s January 11, 2011 request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(2). The Board finds that OWCP properly denied appellant’s request for reconsideration.

In his application for reconsideration, appellant, through his representative, did not identify a specific point of law or show that it was erroneously applied or interpreted; nor did he advance a new and relevant legal argument. He merely made a blanket assertion that the decision was contrary to fact and law, without providing any supporting evidence or argument. A claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not, however, submit new and relevant medical evidence in this case.

Appellant submitted a copy of a July 5, 2010 report and accompanying permanent impairment worksheet from Dr. Aminov. The July 5, 2010 report is a duplicate of a report previously received and considered by the OWCP hearing representative. It is well established that evidence which repeats or is duplicative of that already of record is of no evidentiary value.<sup>8</sup> The Board finds that the copy of the July 5, 2010 report does not constitute new and relevant evidence.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant 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 relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

---

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>8</sup> *See Johnnie B. Causey*, 57 ECAB 359 (2006).

On appeal, counsel contends that the January 24, 2011 decision is contrary to fact and law. For reasons stated, the Board finds that the evidence submitted in support of appellant's request for reconsideration is insufficient to warrant further merit review.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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