

On appeal, counsel contends that OWCP's decision is contrary to law and fact.

FACTUAL HISTORY

This case was previously before the Board.³ Briefly, on March 25, 2009 appellant, a 54-year-old wood worker/forklift operator, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right shoulder injury in the performance of duty on March 24, 2009 while pushing a sheet of plywood. By decision dated May 2, 2011, OWCP denied the claim on the basis that the medical evidence was insufficient to establish a causal relationship between appellant's condition and the March 24, 2009 employment incident. In the most recent appeal of the Board, in a decision dated January 27, 2014, it affirmed OWCP's March 21, 2013 decision denying appellant's request for reconsideration as it was not timely filed and did not establish clear evidence of error. The facts of the case, as set forth in the prior decision, are incorporated by reference.

On December 5, 2014 appellant, through counsel, requested reconsideration and resubmitted medical evidence dated October 6, 2009 through October 31, 2011 from Dr. Mimi Zumwalt, a Board-certified orthopedic surgeon, which were previously considered by OWCP. Dr. Zumwalt diagnosed a torn right rotator cuff based on clinical examination and diagnostic studies. On October 6, 2009 she indicated that appellant had a history of a lifting injury about 30 years prior and had noticed a pop and pain while pushing plywood. Dr. Zumwalt reported on October 24, 2001 that she treated appellant for a work-related shoulder injury sustained at work two years prior.

By decision dated December 16, 2014, OWCP denied appellant's request for reconsideration of the merits, finding that he did not submit pertinent new and relevant evidence and did not show that it erroneously applied or interpreted a point of law not previously considered by OWCP.

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.⁴ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁵

³ Docket No. 13-1816 (issued January 27, 2014). In an appeal request form postmarked June 4, 2011, appellant requested a telephonic oral hearing before an OWCP hearing representative. By decisions dated July 13, 2011 and August 24, 2012, OWCP denied appellant's request for an oral hearing finding it untimely because it was not made within 30 days of its May 2, 2011 merit decision. On March 14, 2013 appellant, through counsel, requested reconsideration of the May 2, 2011 decision.

⁴ 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 his own motion or on application. 5 U.S.C. § 8128(a).

⁵ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, 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 (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁶ 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.⁷ 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.⁸

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁹ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰

ANALYSIS

In support of his December 5, 2014 reconsideration request, appellant resubmitted medical evidence dated October 6, 2009 through October 31, 2011. The Board finds that this evidence did not require reopening appellant's case for merit review because appellant had submitted the same evidence, which was previously reviewed by OWCP and this Board. As the reports repeat evidence already in the case record, it is duplicative and does not constitute relevant and pertinent new evidence. Thus, appellant has not established a basis for reopening his case.¹¹

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the OWCP. Because appellant only submitted repetitive evidence with his request for reconsideration, the Board finds that he did not meet any of the necessary requirements and is not entitled to further merit review.¹²

On appeal, counsel contends that OWCP's decision is contrary to law and fact. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.

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

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ See *supra* note 5. See also *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *Id.* See also *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ See *D.K.*, 59 ECAB 141 (2007).

¹² See *L.H.*, 59 ECAB 253 (2007).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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