

FACTUAL HISTORY

This case has previously been before the Board. By decision dated May 21, 2009, the Board affirmed March 4 and July 22, 2008 Office decisions finding that appellant did not sustain an injury on January 13, 2008 in the performance of duty.² The facts and circumstances surrounding the prior appeal are hereby incorporated by reference.

On February 13, 2010 appellant, through his attorney, requested reconsideration. He submitted a December 4, 2009 report from Dr. D. Scott McCaffrey, a physician with Work Star who specializes in emergency medicine, in support of his request. Dr. McCaffrey evaluated appellant for chest pain and noted that it began on January 13, 2008 after he experienced a snap in his chest wall after moving furniture at work. He discussed appellant's prior history of bypass surgery and listed findings on examination. Dr. McCaffrey diagnosed chest wall pain with incision dehiscence. He found that appellant should remain off duty.

By decision dated May 20, 2010, the Office denied appellant's request for reconsideration after finding that Dr. McCaffrey's report was cumulative in nature and thus insufficient to warrant reopening the case for further merit review. It noted that Dr. McCaffrey's report was substantially similar to reports by other physicians with WorkStar previously reviewed by the Office.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office 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, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

² Docket No. 08-2283 (issued May 21, 2009). On January 22, 2008 appellant, then a 53-year-old store associate, filed a claim alleging that he sustained a shattered suture in the upper sternum, a torn chest cavity and low back pain on January 13, 2008 after moving a bookcase. He had a history of bypass surgery. The Office determined that appellant established the occurrence of the claimed work event of moving office furniture on January 13, 2008 but did not submit sufficient medical evidence to show that he sustained a medical condition as a result of the accepted employment incident.

³ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

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.⁷ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁹

ANALYSIS

In the last merit decision, the Board affirmed the Office's finding that the medical evidence was insufficient to establish that appellant sustained a shattered suture in his upper sternum, a torn chest cavity and low back pain after helping move a bookshelf on January 13, 2008. On February 13, 2010 his attorney requested reconsideration and submitted a December 4, 2009 medical report from Dr. McCaffrey who discussed appellant's history of feeling a snap in his chest wall after moving furniture at work and his history of bypass surgery. Dr. McCaffrey diagnosed chest wall pain with incision dehiscence and found that appellant was unable to work. The record contains prior reports reviewing the history of injury and diagnosing either a fractured sternum wire or chest wall pain but not offering a specific opinion on causal relationship. Dr. McCaffrey did not address the cause of the diagnosed condition of chest wall pain with incision dehiscence. Consequently, his report is substantially similar to the medical evidence previously considered as it fails to address the relevant issue of causation. A medical report which is cumulative in nature is insufficient to warrant reopening the case for merit review.¹⁰

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's request to reopen his claim for further review of the merits under section 8128(a).

⁷ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁸ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

¹⁰ *F.R.*, 58 ECAB 607 (2007); *Patricia Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 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