

**United States Department of Labor
Employees' Compensation Appeals Board**

F.W., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION WHIDBEY ISLAND,
Oak Harbor, WA, Employer**

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**Docket Nos. 11-1348 and
11-1362
Issued: September 13, 2011**

Appearances:
John R. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING REQUEST FOR ORAL ARGUMENT

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On May 9 and 16, 2011 appellant, through his attorney, filed for review of the March 24, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which denied his request for reconsideration under 5 U.S.C. § 8128(a). The appeal was docketed as Nos. 11-1348 and 11-1362, respectively. Appellant submitted a timely request for oral argument, explaining the need to address the evidence of record before the Board.¹ Appellant's attorney contends that, in denying appellant's request for reconsideration, OWCP applied an improper standard in determining that the new medical evidence submitted by appellant, which included a May 29, 2009 medical report from Dr. Robert M. Rakita, a Board-certified internist, and an undated report from Dr. Steve H. Kirtland, an attending Board-certified internist, were equivocal in nature and, thus, insufficient to warrant the reopening of his claim for a merit review. He further contends that OWCP incorrectly stated that the July 27, 2009 report of Dr. Paul A. Zaveruha, a surgeon, was previously reviewed by the Board in its prior decision. Counsel argues that the Board cannot review medical evidence that was not before OWCP at the

¹ 20 C.F.R. § 501.5(b) provides that a request for oral argument must be submitted in writing no later than 60 days after the filing of the appeal and specify the issue(s) to be argued and provide a statement supporting the need for oral argument.

time it issued the final decision in the case and that the rationale for this rule should be clearly set forth by the Board.

The Board notes that this is appellant's second appeal. In Docket No. 09-1193, issued May 6, 2010, the Board found that appellant did not sustain a fungus condition in the performance of duty as he failed to submit sufficient rationalized medical evidence establishing that his condition was causally related to his accepted employment-related exposure to bird droppings.

The Board has duly considered the matter and finds that appellant's request for oral argument should be granted. Pursuant to 20 C.F.R. § 501.5(a), oral argument may be held in the discretion of the Board.² In the present appeal, appellant's request was timely filed and a need for oral argument was advanced. The Board has jurisdiction over the merits of appellant's claim. The Board, in its discretion, grants oral argument.

IT IS HEREBY ORDERED THAT appellant's request for oral argument in Docket Nos. 11-1348 and 11-1362 be granted.

Issued: September 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² 20 C.F.R. § 501.5(a).