

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, then a 30-year-old custodial worker, pulled a back muscle while lifting a five-gallon bucket of water on May 22, 1986. OWCP accepted the claim for lower back strain and paid temporary total disability compensation. By decision dated April 17, 1992, OWCP terminated appellant's wage-loss and medical benefits. On August 18, 2003 appellant filed a Form CA-2 recurrence of disability claim, alleging his disability as of May 1, 2002 was caused or aggravated by his accepted low back condition. He submitted medical reports from Dr. Montague Blundon, Board-certified in orthopedic surgery, dated May 5, 2002 through September 18, 2003. Dr. Blundon diagnosed acute trauma of the lumbar spine stemming from the May 1986 work injury and noted complaints of pain with bending, lifting, range of motion and any type of stress. He stated that x-rays did not show any congenital anomalies or severe degenerative arthritis. Dr. Blundon asserted that appellant had stopped work due to severe back pain and muscle spasms and was not able to return to work.

By decision dated January 16, 2009, OWCP denied appellant's recurrence claim finding that he did not submit sufficient medical evidence to establish that his disability as of May 1, 2002 was causally related to his employment injury. In a December 8, 2009 decision,³ the Board affirmed the OWCP's January 16, 2009 decision. The facts of this case as set forth in the Board's December 8, 2009 decision are incorporated by reference.

By letter dated July 21, 2010, appellant requested reconsideration.

Appellant submitted reports and treatment notes dated March to June 2010 from Dr. Haddis Hagos, Board-certified in pain medicine, who noted recurrent low back pain and radiculopathy in the lower extremities. The reports, however, did not contain any opinion on whether appellant's claimed condition or disability as of May 1, 2002 was caused or aggravated by the accepted condition.

By decision dated December 29, 2010, OWCP denied modification of the January 16, 2010 decision.

On January 5, 2011 appellant again requested reconsideration. In reports dated July 14 to October 20, 2010, Dr. Monish Gariwala, Board-certified in pain medicine and physical medicine and rehabilitation, stated that appellant had severe low back pain radiating down both legs, with intermittent muscle spasms. He advised that appellant had a work-related injury in 1986 but did not attribute any of appellant's current symptoms to this injury.

By decision dated April 8, 2011, OWCP denied modification of the prior decision.

On June 22, 2011 appellant requested reconsideration.

In an April 18, 2011 report, Dr. Anuradha Arun, Board-certified in internal medicine, noted that appellant had sustained a work-related injury in 1986. He also experienced cervical

³ Docket No. 09-1089 (issued December 8, 2009).

and lumbar pain since that date. Dr. Arun stated that appellant was being monitored by pain management and opined that there was possible decompensation with pain and symptoms.

In a report dated April 28, 2011, Dr. Gariwala advised that appellant had experienced pain in his back since his 1986 work injury and had not returned to work since that time. He stated that appellant was not able to function due to continued severe, chronic back pain. Dr. Gariwala diagnosed cervical and lumbar spondylosis and degenerative disc disease.

By decision dated August 3, 2011, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵

ANALYSIS

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has he advanced a relevant legal argument not previously considered by OWCP.

The evidence appellant submitted on reconsideration is not relevant to the underlying issue of whether he sustained a recurrence of disability on May 1, 2002 causally related to his May 22, 1986 injury. He submitted reports from Drs. Gariwala and Arun who noted that he had pain in his low back since his 1986 work injury. Dr. Gariwala diagnosed cervical and lumbar spondylosis and degenerative disc disease and advised that appellant was unable to function due to continued severe, chronic back pain. Dr. Arun noted a history of cervical and lumbar pain since the 1986 work injury and asserted that appellant might have sustained decompensation with pain and symptoms. Neither physician, however, addressed the issue of appellant's disability as of May 1, 2002. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁶ Appellant did not submit medical evidence which addressed the relevant issue of whether he sustained a recurrence of disability as of May 1, 2002 causally related to the accepted condition of low back strain. His reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously

⁴ 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

⁵ *Howard A. Williams*, 45 ECAB 853 (1994).

⁶ *See David J. McDonald*, 50 ECAB 185 (1998).

considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 25, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

⁷ The Board notes that following OWCP's decision dated August 3, 2011 appellant again requested reconsideration by OWCP on August 18, 2011 and submitted additional evidence. As this evidence was not before OWCP at the time of the August 3, 2011 decision, the Board is without jurisdiction to review this evidence on appeal. 20 C.F.R. § 501.2(c)(1).