

FACTUAL HISTORY

On August 27, 2010 appellant, a 49-year-old claims representative, filed an occupational disease claim alleging that on March 16, 2010 he developed chest pains and memory loss as a result of a stressful work environment. He did not stop work.

By letters dated September 16 and 17, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence.

Appellant's supervisor submitted a statement and noted that appellant informed him on April 14, 2010 during a performance evaluation that he experienced stress and was undergoing treatment for high blood pressure. He noted that appellant submitted two requests for reasonable accommodation. Also submitted was a job description for a social insurance specialist.

Appellant submitted an undated statement and asserted that he developed hypertensive cardiovascular disease and anxiety as a result of work-related stress and anxiety. He noted that his cardiovascular disease has made it difficult to work as he had shooting chest pains and elevated blood pressure. Appellant further noted that he experienced migraine headaches which were aggravated by work stress and caused vision impairment. He reported all of these conditions to his supervisor and requested reasonable accommodations but his request was denied because of insufficient medical evidence. Appellant submitted a log from March 16 to September 27, 2010 which noted meetings with his supervisor regarding his case load, his inability to keep up with the workload and his performance evaluations.

Appellant was treated by Dr. Surraiya Siddique, a Board-certified family practitioner, from March 24 to September 21, 2010, for hypertensive cardiovascular disease which was under control but increased with anxiety and stress at work. Dr. Siddique noted that he experienced chest pain radiating into his left arm on March 24, 2010 and a stress test revealed elevated blood pressure and chest discomfort. On July 19, 2010 she noted that appellant presented with chest pain which he reported only occurred at work and was stress related. Appellant was also treated by Dr. Bonnie J. Baker, a cardiologist, from May 3 to September 10, 2010, for wandering parasternal chest discomfort reported to occur at work. On May 3, 2010 he was treated by Dr. Peter Tang, a Board-certified orthopedist, for worsening bilateral knee pain. On June 3, 2010 Dr. Jose C. DeHoyos, a Board-certified cardiologist, performed a stress test which revealed symptoms consistent with chest discomfort and hypertensive response. An electrocardiogram was normal. On June 24, 2010 appellant was treated by Dr. James Haisten, a cardiologist, who performed an echocardiogram which revealed concentric left ventricular hypertrophy with left ventricular diastolic dysfunction, left atrial enlargement, mitral regurgitation and pulmonary artery pressure.

The employing establishment submitted an October 5, 2010 statement from Rich Elmore, appellant's supervisor, who noted that, after numerous quality reviews, appellant was placed on a performance assistance plan on February 11, 2010. The plan was not successful and on May 10, 2010 appellant was placed on an opportunity to perform successfully. Mr. Elmore noted that before being placed on a performance assistance plan appellant did not report chest pains. He

noted that appellant requested reasonable accommodation which was denied because the medical evidence was insufficient. Also submitted was a copy of the February 23, 2010 performance assistance plan, the May 10, 2010 opportunity to perform successfully and August 31 and September 22, 2010 progress interviews.

In a decision dated February 17, 2011, OWCP denied appellant's claim on the grounds that the evidence did not support that the employment incidents occurred as alleged.

In an appeal request form dated January 9, 2012, appellant requested reconsideration. He submitted a document entitled "medical evidence" by an unknown author which summarized his cardiac care. The document noted appellant was diagnosed with hypertension with chest pain which was work related. It was noted that he requested reasonable accommodations which was denied by his employer.² Also submitted was an x-ray of the lumbar spine dated January 24, 2012 which revealed osteoarthritis, stable compression fracture at T12, unstable spondylolisthesis at L5-S1 and discogenic disease. Appellant submitted a January 24, 2012 report from Dr. Siddique who treated appellant for lesions to the face, ear and arm and low back and hip pain. Dr. Siddique diagnosed allergic rhinitis due to pollen, acute bronchitis, acuter pharyngitis, atypical chest pain, anxiety, migraine headaches and obesity.

By decision dated February 9, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

² The second page of this document is illegible.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

OWCP's most recent merit decision dated February 17, 2011 denied appellant's claim for an emotional condition. It denied appellant's January 9, 2012 reconsideration request, without a merit review and appellant appealed this decision to the Board.

As noted above, the Board does not have jurisdiction over the February 17, 2011 OWCP decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his January 9, 2012 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant evidence in this case. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant submitted a document entitled "medical evidence" by an unknown author. However, this report is not relevant as it merely repeats appellant's general allegations that were previously considered.⁶ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant also submitted an x-ray of the lumbar spine dated January 24, 2012 and a January 24, 2012 report from Dr. Siddique. However, this evidence is not relevant since the underlying issue is whether appellant has established a compensable employment factor.⁷ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Therefore, the Board finds that OWCP properly determined that appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his January 9, 2012 request for reconsideration.

The Board accordingly 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

⁵ *Id.* at § 10.608(b).

⁶ 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; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ See *Lori A. Facey*, 55 ECAB 217 (2004) (where a claimant has not established a compensable employment factor, the Board has held that it need not address the medical evidence of record).

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.

On appeal appellant asserts that he submitted sufficient evidence to support that he sustained an emotional condition causally related to his employment. As noted above, the Board does not have jurisdiction over the merits of his claim, only whether he submitted sufficient evidence to warrant reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2). The evidence submitted with appellant's January 9, 2012 reconsideration request was insufficient to warrant a merit review of his decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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