

evidence” and by refusing to address the claim for a schedule award at any time or at any step in the administrative process.

FACTUAL HISTORY

On February 27, 2002 the employee, then a 39-year-old correctional officer, filed a traumatic injury claim alleging that he sustained injury to his arm, neck and fingers during a self-defense maneuver. He stopped work that day and did not return. OWCP accepted the claim for cervical strain and aggravation of degenerative cervical disc disease and paid appropriate benefits. The employee died on April 18, 2005. The death certificate reported the cause of death was a gunshot wound and chronic depression. It noted that the employee had a prescription drug addiction and was postoperative times two.

On August 28, 2006 a Form CA-5, claim for compensation by widow, widower and/or children, was filed claiming that the employee’s death by suicide on April 18, 2005 was related to the accepted work injury.

By decision dated April 24, 2008, OWCP denied the claim for survivor’s benefits on the grounds that the medical evidence failed to establish that the employee’s death was caused by the accepted February 27, 2002 work-related injury. Determinative weight was provided to Dr. Michael Rieser, a Board-certified psychiatrist and second opinion physician, who found in the absence of a suicide note, it was impossible to attribute the employee’s suicide to the neck injury, substance abuse or any other medical condition.

In a March 21, 2009 letter, appellant, guardian of the employee’s son, disagreed with the decision and requested reconsideration. In his March 21, 2009 letter, he contended that the employee’s survivors were entitled to compensation due to the employee’s permanent loss of ability to earn money and for his retirement. Appellant also argued that the employee’s death by suicide was causally related to the work injury because the work injury caused chronic pain, dependency on pain medicine and permanently disabled him for work. This resulted in a mental state of depression causing the employee to commit suicide. In support of his claim, appellant submitted duplicate evidence which was previously of record and considered. New evidence included life expectancy tables and vital statistics reports in 2004 as well as Kentucky Administrative Regulations.

In a March 9, 2009 report, Dr. William R. Durham, an internist, stated that the employee was under his active care prior to and during the time of the February 2002 work-related injury. He opined that the work-related injury was directly responsible for the employee’s subsequent permanent and total disability. Dr. Durham also opined that the work-related injury and resultant need for surgical treatment resulted in chronic pain and depression, substance dependence and the employee’s eventual suicidal condition.

In a March 16, 2009 report, Dr. Amr O. El-Naggar, a Board-certified neurosurgeon, stated that the employee was under his active care prior to and during the time of the February 2002 work-related injury. He opined that the work-related injury was directly responsible for the employee’s subsequent permanent disability.

In an undated addendum to a previously submitted January 9, 2007 report, Dr. C. William Briscoe, a Board-certified psychiatrist, stated that the employee's psychiatric diagnosis was on mood disorder not otherwise specified. The employee's depression was significantly associated with multiple factors which included the cervical neck injury in February 2002 with two subsequent surgeries in 2003; physical disability; chronic nonmalignant pain secondary to the cervical neck injury; and opiate dependency evolving from the treatment of his chronic pain. No history of depressive illness was noted prior to 2002. Dr. Briscoe also diagnosed a history of alcohol abuse, which was not clearly documented prior to July 2003. He opined that there were multiple psychosocial problems evolving from the employee's injury.

By decision dated February 5, 2010, OWCP denied modification of the prior decision finding that the medical evidence was insufficient to establish that the employee's death was caused by the February 27, 2002 work injury.

On February 4, 2011 appellant requested reconsideration of the prior decision. In a 26 page letter dated February 4, 2011, he contended that since the employee was entitled to benefits due to his employment-related injury prior to his death, then his survivors should also receive compensation. Appellant argued that the employee's death was causally related to his work injury and compensable. He contended that OWCP applied an incorrect legal standard as it should have considered the entire record in performing a merit review as opposed to the newly submitted evidence. Appellant argued that the claims examiner also erred by according Dr. Rieser's opinion greater weight than appellant's treating physician's on the basis that he was a psychiatrist. He also argued that the claims examiner erred by refusing to consider the claim for permanent and total disability. Appellant submitted copies of medical evidence previously of record.² No new evidence was submitted.

By decision dated April 18, 2011, OWCP issued a nonmerit decision denying appellant's request for reconsideration on the grounds that he did not submit any new and relevant evidence or legal arguments warranting further merit review of his claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP regulations provide that the evidence or argument submitted by a claimant must either: (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.⁴ Where the request for

² Medical evidence previously of record received in support of appellant's reconsideration request consisted of: medical evidence dated July 23 and 25, 2003 from Baptist Regional Medical Center; reports dated March 21, 2002 and April 28, 2003 from Dr. El-Naggar; reports dated July 29 and August 4, 2003 from Psychology Center for the Cumberland; a July 22, 2004, June 15, 2006 and March 9, 2009 reports from Dr. William R. Durham; a September 30, 2004 and February 10, 2005 second opinion evaluation reports from Dr. A. Bernhard Kliefoth, III; a January 27, 2005 report from St. Mary's Medical Center; a January 9, 2007 report from Dr. Briscoe; and a March 16, 2009 report from Dr. El-Naggar.

³ 5 U.S.C. § 8128(a).

⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

On February 4, 2011 appellant disagreed with OWCP's February 5, 2010 decision which denied his claim for survivor's benefits on the grounds that the medical evidence failed to establish that the employee's death was caused by the accepted February 27, 2002 work injury, for which he received compensation.

On reconsideration, appellant contended that OWCP erred in only conducting a limited review of his case as it should have considered the entire record and performed a merit review as opposed to deciding whether the case should be reopened based on new evidence and new legal arguments. He further argued that the claims examiner erred in his legal analysis by according the reviewing expert's opinion greater weight than the employee's treating physicians on the basis that he was a psychiatrist. The Board notes that in its February 5, 2010 decision OWCP did reopen the case for a review on the merits and denied modification of its earlier decision which denied the claim for survivor benefits. Moreover, the arguments raised by appellant addressed the relative merits of the medical evidence of record, suggesting that it was supportive of his survivor claim. OWCP previously weighed this evidence, however, and found it insufficient to establish that the employee's suicide was caused by the work injury. Further appellant did not submit any additional relevant and pertinent new medical evidence or legal arguments not previously considered by OWCP in support of his contentions.⁸

Appellant additionally argued that OWCP erred by not addressing his schedule award claim. While the record reflects the employee had filed a schedule award claim, OWCP has not issued a decision on this issue. The Board's jurisdiction extends only to the review of final decisions issued by OWCP.⁹ Furthermore, the issue of a schedule award is not pertinent to the underlying issue in this appeal, which is medical in nature, as to whether the employee's death is causally related to his work injury.

Accordingly, the Board finds that appellant's contentions are insufficient to reopen his claim for further merit review. The Board finds that OWCP properly determined that appellant

⁵ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

⁶ *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

⁷ *Kevin M. Fatzer*, 51 ECAB 407 (2000).

⁸ As noted, appellant submitted medical evidence previously considered by OWCP. Such evidence does not constitute a basis for reopening a claim for merit review. See *supra* note 7.

⁹ 20 C.F.R. § 501.2(c); *E.L.*, 59 ECAB 405 (2008).

was not entitled to further review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his February 4, 2011 request for reconsideration.¹⁰

On appeal, appellant contends that OWCP abused its discretion in its February 5, 2010 and April 18, 2011 decisions by limiting review of the evidence to only “newly submitted evidence” versus reviewing the evidence as a whole. He also contends that it failed to address the claim for a schedule award. As noted, OWCP reviewed the evidence on the merits in its February 5, 2010 decision and properly denied merit review in its April 18, 2011 decision. The Board does not have jurisdiction to consider the merits of the claim on this appeal.¹¹ As explained, the matter of whether the employee was entitled to a schedule award is not pertinent to the matter before the Board on this appeal.

CONCLUSION

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

¹⁰ *M.E.*, 58 ECAB 694 (2007) (when an application for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

¹¹ *See supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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