



## **FACTUAL HISTORY**

On March 4, 2010 appellant, then a 51-year-old assistant director of field operations and mission support, filed a traumatic injury claim alleging that on March 1, 2010 he contracted methicillin-resistant staphylococcus aureus (MRSA) while using a treadmill in the government-provided gym.

On March 19, 2010 OWCP received treatment reports and diagnostic testing from West Jefferson Medical Center regarding appellant's treatment for cellulitis. The history of the injury listed in a March 2, 2010 consultation report noted that appellant performed recent outdoor tasks when "he may or may not have rubbed up against a (sic) some bushes or weeds" and denied any breakage of the skin or puncture wounds. A discharge sheet noted that appellant was admitted on March 2, 2010 for treatment of right arm cellulitis and released on March 5, 2010. He attributed the condition to an abrasion he sustained at a health club.

By correspondence dated March 19, 2010, OWCP advised appellant that the evidence of record was insufficient to support his claim. Appellant was asked to submit additional medical and factual evidence to support his claim and given 30 days to provide the requested information.

Appellant subsequently submitted reports dated March 7 and 17, 2010 from Dr. Thomas P. Melancon, a treating Board-certified internist, who diagnosed cellulitis as a result of appellant's arm swelling up after sustaining an abrasion while using a treadmill at the employing establishment. Dr. Melancon checked "yes" to a form question of whether the condition was employment related.

By decision dated April 26, 2010, OWCP denied appellant's claim. It found the medical evidence insufficient to establish a causal relationship between the cellulitis condition and his employment.

On February 14, 2011 appellant requested reconsideration and resubmitted medical and factual evidence. In a July 27, 2007 report, Dr. Melancon noted that appellant sustained an abrasion on March 1, 2010 while walking on an employing establishment owned treadmill. He attributed appellant's MRSA to the abrasion as this type of medical emergency normally occurred within 24 hours. Dr. Melancon found it very unlikely that the infection had been contracted from appellant working in his yard on February 28, 2010.

By decision dated February 28, 2011, OWCP denied reconsideration.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that a claimant must: (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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

considered by OWCP.<sup>3</sup> To be entitled to a merit review of an OWCP 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.<sup>4</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### ANALYSIS

The only decision before the Board on this appeal is the February 28, 2011 nonmerit decision denying appellant's application for reconsideration of OWCP's April 26, 2010 decision that denied his cellulitis claim. The issue on appeal is whether appellant's February 14, 2011 reconsideration request met any of the conditions of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for further review of the merits as to whether he has established that his infection was causally related to his employment. Appellant's February 14, 2011 request for reconsideration did not allege nor demonstrate that OWCP erroneously applied or interpreted a specific point of law. The only new evidence submitted by appellant is a July 27, 2010 report from Dr. Melancon, who attributed appellant's cellulitis to an abrasion he sustained on the treadmill. However, this report is essentially duplicative to his March 7 and 17, 2010 reports, which were previously reviewed by OWCP. As Dr. Melancon's report is repetitious of his earlier reports, the Board finds that it is insufficient to reopen appellant's claim for further merit review.<sup>6</sup> The record contains no additional medical evidence submitted on reconsideration.

The Board finds that appellant did not submit arguments or evidence showing that OWCP erroneously applied or interpreted a specific point of law; advanced a relevant legal argument not previously considered; or constituted relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the regulatory requirements and OWCP properly declined to reopen his claim for further merit review.<sup>7</sup>

### CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>4</sup> 20 C.F.R. § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>5</sup> 20 C.F.R. § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>6</sup> *Eugene F. Butler*, 36 ECAB 393 (1984).

<sup>7</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 28, 2011 is affirmed.

Issued: March 19, 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