



## **FACTUAL HISTORY**

On April 11, 2010 appellant, then a 63-year-old mail handler, filed an occupational disease claim alleging that he sustained bilateral hip conditions as a result of employment activities.<sup>3</sup> He first became aware of his condition on November 18, 1998.

Appellant submitted reports from his attending physician, Dr. Fred Blackwell, an orthopedic surgeon. On June 19, 2010 Dr. Blackwell opined that appellant's hip condition was caused by driving a tow tractor for three weeks. In a July 5, 2010 report, he diagnosed bilateral greater trochanteric bursitis of the hips which he stated "appeared" to be work related.

By decision dated July 30, 2010, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between his claimed hip condition and factors of his federal employment.

On July 6, 2011 appellant submitted a request for reconsideration, noting that he planned to submit new evidence to establish his hip claim. He contended that the information provided by his treating physician was untrue and that he had never driven a tractor trailer.

Appellant submitted follow-up reports and work status reports from Dr. Blackwell for the period August 17, 2010 through March 8, 2011, which reflected continuing bilateral hip pain and indicated that he was able to work with restrictions. He submitted documents relating to prior injuries, including: a February 3, 1999 report of a magnetic resonance imaging (MRI) scan of the left knee; an October 12, 2000 report from Dr. Richard Nolan, a Board-certified orthopedic surgeon, who diagnosed a tear of the left anterior cruciate ligament; February 10, 1999 chart notes, bearing an illegible signature, containing a diagnosis of tendinitis of the bilateral forearms; a March 9, 1999 attending physician's report from Dr. Blackwell diagnosing tendinitis of the bilateral forearms; and an April 21, 1999 report from Dr. Blackwell containing a diagnosis of degenerative joint disease, elbow extensor and flexor tendinitis. Appellant submitted duplicates of reports from Dr. Blackwell dated June 19 and July 5, 2010, as well as copies of certificates representing completion of courses for training in automotive services.

By decision dated July 21, 2011, OWCP denied appellant's request for reconsideration, finding that the evidence was insufficient to warrant a merit review.

---

<sup>3</sup> Prior claims include a November 21, 1998 occupational disease claim that was accepted for left medial meniscal tear (File No. xxxxxx162); a November 26, 1998 occupational disease claim that was accepted for radial styloid tenosynovitis and medial epicondylitis (File No. xxxxxx330); an August 11, 2004 occupational disease claim that was accepted for right hand sprain and localized primary osteoarthritis (File No. xxxxxx893); an August 23, 2007 occupational disease claim that was accepted for tendinitis and disorder of the bursae (File No. xxxxxx640); and a July 10, 2007 occupational disease claim that was accepted for left hand sprain and localized primary osteoarthritis (File No. xxxxxx644).

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</sup> OWCP regulations provide that the evidence or argument submitted by 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 considered by OWCP.<sup>5</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>6</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>7</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

## ANALYSIS

By decision dated July 30, 2010, OWCP denied appellant's claim on the grounds that the evidence failed to establish a causal relationship between his diagnosed condition and his identified employment activities. The issue is whether the evidence and argument submitted in support of appellant's July 6, 2011 request for reconsideration is sufficient to warrant further merit review pursuant to 20 C.F.R. § 10.606(b)(2).

In his application for reconsideration, appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. He did not advance a new and relevant legal argument.<sup>9</sup> Although appellant contended that Dr. Blackwell's reports contained misrepresentations, he did not provide any additional evidence to support his contention. Without any such evidence, his contention is insufficient to warrant further merit review. A claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not, however, submit new and relevant medical evidence in this case. The Board finds that OWCP properly determined that appellant was not entitled to further review of the merits.

Evidence received by in support of the reconsideration request included follow-up reports and work status reports from Dr. Blackwell which reflected continuing bilateral hip pain and indicated that he was able to work with restrictions. As these reports do not contain any opinion or discussion on the cause of appellant's condition, they are of diminished probative value to the

---

<sup>4</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at anytime on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> The Board notes that no specific allegations were made and no evidence was submitted to support claims of bias on the part of OWCP's referral physicians.

issue in this case and insufficient to warrant merit review. Certificates of course completion and documents relating to prior forearm, knee and elbow injuries are also irrelevant to a determination of the causal relationship between appellant's diagnosed hip condition his employment activities. As noted, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> June 19 and July 5, 2010 reports from Dr. Blackwell, which were previously received into evidence and reviewed by OWCP, are cumulative and duplicative in nature and therefore have no evidentiary value.<sup>11</sup> The Board finds that the evidence submitted by appellant does not constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>12</sup> Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board 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 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 contends that his treating physician refused to state the truth regarding the cause of his hip condition. For reasons stated, the Board finds that the evidence submitted in support of his request for reconsideration is insufficient to warrant further merit review.<sup>13</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).

---

<sup>10</sup> *Edward Matthew Diekemper, supra* note 8.

<sup>11</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>12</sup> *See Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>13</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its January 9, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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