

letter of removal from the employing establishment. He became aware of his condition and realized it was causally related to his employment on April 25, 2010. Appellant stopped work on April 27, 2010.

Appellant submitted an April 25, 2011 return to work slip prepared by Dr. Natalie K. Bittar, a family practitioner, who noted that appellant was treated and could return to work on May 30, 2011. In a prescription note dated April 25, 2011, Dr. Bittar prescribed antidepressant medication.

By letter dated July 29, 2011, OWCP advised appellant of the factual and medical evidence needed to establish his claim and requested that he submit such evidence.

Appellant submitted a return to work slip from Dr. Bittar dated August 31, 2011. Dr. Bittar noted that appellant would be off work from August 28 to October 31, 2011.

In a decision dated September 30, 2011, OWCP denied appellant's claim finding that the evidence did not support that the employment incident occurred as alleged.

In a form dated October 10, 2011, appellant requested reconsideration. He submitted a return to work slip from Dr. Bittar dated April 25, 2011, which noted that he could return to work on May 30, 2011. A June 28, 2011 slip noted that appellant could return to work on August 29, 2011 and could not work on June 27, 2011. An August 31, 2011 slip indicated that he was off work from August 28 to October 31, 2011 and an October 21, 2011 slip advised that he could return to work on January 10, 2012. An April 27, 2011 certificate of health care provider from Dr. Bittar noted that appellant was incapacitated from April 25 to May 30, 2011. Dr. Bittar advised that appellant's condition commenced on March 25, 2011 and he was unable to work, specifically driving and delivering mail. She diagnosed acute anxiety attacks, characterized by palpitations, palm sweats, dizziness, nervousness, inability to think straight and insomnia. Dr. Bittar opined that when appellant had anxiety attacks he was unable to perform his duties. In a June 8, 2011 report, she noted treating him since April 25, 2011 for multiple medical conditions including insomnia, anxiety and panic attacks. Dr. Bittar noted that the conditions were all possibly due to work-related stress. She noted that appellant was fatigued due to lack of sleep caused by periodic panic attacks. Dr. Bittar diagnosed general anxiety which appeared to be work induced. Also submitted was a duplicate CA-2, previously of record.

By decision dated January 11, 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,² OWCP has the discretion to reopen a case for review on the merits. It 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

² 5 U.S.C. § 8128(a).

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.”³

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.⁴

ANALYSIS

OWCP’s most recent merit decision dated September 30, 2011 denied appellant’s claim for an emotional condition because he did not submit sufficient factual evidence establishing that particular employment incidents occurred as described. It denied his October 10, 2011 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 September 30, 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 December 30, 2011 application for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law. 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. 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 copy of the Form CA-2. However, this report is duplicative of evidence previously submitted by appellant and considered in OWCP’s decision dated September 30, 2012 and found to be insufficient.⁵ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

⁵ 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).

Appellant also submitted return to work slips from Dr. Bittar dated April 25, June 28, August 31 and October 21, 2011 which noted appellant would be off work intermittently until January 10, 2012. Similarly, in an April 27, 2011 certificate of health care provider, Dr. Bittar noted that appellant was incapacitated from April 25 to May 30, 2011. She noted that appellant's condition commenced on March 25, 2011 and he was unable to work. Dr. Bittar diagnosed acute anxiety attacks and opined that when appellant experienced anxiety attacks he was unable to perform his job duties. Likewise, a June 8, 2011 report from her noted treating him since April 25, 2011 for multiple medical conditions including insomnia, anxiety and panic attacks. Dr. Bittar noted that the conditions were all possibly due to work-related stress. This evidence is not relevant as the underlying issue is whether appellant established a compensable employment factor.⁶ OWCP properly determined that the medical evidence did not constitute a basis for reopening the case for a merit review. Therefore, it properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

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 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 his claim was wrongfully denied and that he submitted sufficient evidence to support that he sustained an emotional condition. As noted, the Board does not have jurisdiction over the merits of his claim; only whether he submitted sufficient evidence to warrant reopening his claim for a merit review. The evidence submitted with appellant's October 10, 2011 reconsideration request was insufficient to warrant further merit review of his claim.

CONCLUSION

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

⁶ See *Margaret S. Krzycki*, 43 ECAB 496 (1992) (where a claimant has not established a compensable employment factor, the Board has held that it need not address the medical evidence of record).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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