

FACTUAL HISTORY

On July 15, 2008 appellant, then a 51-year-old painter, filed a traumatic injury claim alleging that on May 27, 2008 he sustained injuries from a static electrical shock. OWCP accepted the claim for electrocution and the nonfatal effects of electric current in the bilateral upper extremities.

By decision dated April 27, 2010, OWCP denied appellant's request for authorization for physical therapy after September 11, 2009. It found that the opinion of Dr. Patrick Hughes, a Board-certified neurologist and OWCP referral physician, represented the weight of the evidence and established that he had not sustained carpal tunnel syndrome due to the May 27, 2008 work injury and that further physical therapy was not necessary.

In a decision dated September 23, 2010, an OWCP hearing representative vacated the April 27, 2010 decision. She found that a conflict existed between Dr. Hughes and Dr. Peter Terhaar, appellant's attending osteopath, regarding whether appellant sustained carpal tunnel syndrome due to his electric shock and whether further physical therapy was warranted due to his accepted employment injury.

By decision dated January 25, 2011, OWCP denied appellant's request for authorization for additional physical therapy. It determined that the opinion of Dr. M. Reza Samie, a Board-certified neurologist and impartial medical examiner, established that he had not sustained carpal tunnel syndrome or cervical radiculopathy due to his May 27, 2008 employment injury. OWCP further found that Dr. Samie's opinion supported that appellant had no further need for medical treatment, including physical therapy, at the current time.

In a decision dated July 20, 2011, an OWCP hearing representative affirmed the January 25, 2011 decision. She found that the weight of the medical evidence established that appellant did not require further physical therapy due to his accepted work injury.

On July 16, 2012 appellant, through his attorney, requested reconsideration. In support of the request, he submitted a report from Jamie R. Williams, Ph.D., bioengineering. Counsel asserted that Dr. Williams' report explained how the May 27, 2008 incident caused additional injuries.

In a report dated May 14, 2012, Dr. Williams, a biomedical engineer, attributed appellant's nerve damage of the bilateral hands and wrists and exacerbation of a preexisting cervical spine condition to the May 27, 2008 electric shock.

By decision dated October 16, 2012, OWCP denied appellant's request for reconsideration after finding that he had not submitted evidence or raised an argument sufficient to warrant reopening his claim for further merit review under section 8128.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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 considered by OWCP.⁴ 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.⁵ 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.⁶

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁷ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁸ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁹

ANALYSIS

OWCP issued a January 25, 2011 merit decision denying appellant's request for physical therapy and expansion of his claim to include a cervical condition and bilateral carpal tunnel syndrome. In a July 20, 2011 decision, a hearing representative affirmed the January 25, 2011 decision. On July 16, 2012 appellant requested reconsideration of the July 20, 2011 decision.

As noted above, the Board does not have jurisdiction over the July 20, 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 July 16, 2012 request 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. His attorney argued that the May 14, 2012 report from Dr. Williams, a biomechanical engineer, established that he sustained carpal tunnel syndrome and required

³ 5 U.S.C. § 8101 *et seq.* Section 8128(a) of FECA provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁸ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

physical therapy due to his May 27, 2008 work injury. The underlying issue in this case, expansion of the claim and the need for further medical treatment, is a medical issue which must be addressed by relevant medical evidence.¹⁰ Dr. Williams is not a medical doctor but instead an engineer and thus not qualified to provide medical evidence.¹¹ A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence in this case. As discussed, the May 14, 2012 report from Dr. Williams is of no probative value on the medical issue in this case. Consequently, it is not relevant to the issue at hand.¹²

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 new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

¹⁰ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ See 5 U.S.C. § 8101(2); see also *Martin B. Garter*, 27 ECAB 485 (1976).

¹² The Board has held that the submission of evidence that is not relevant to the particular issue involved in a case does not constitute a basis for reopening the claim; see *Bonnie A. Contreras*, 57 ECAB 364 (2006).

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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