

pushing a container. In a note dated July 18, 2008, appellant's attending physician, Dr. H. William Schaaf, a Board-certified orthopedic surgeon, stated that he had a severe setback while pushing something at work. He found osteoarthritis but no fracture. Dr. Schaaf recommended a total hip replacement. Appellant underwent a total hip arthroplasty on August 14, 2008. By decision dated November 7, 2008, OWCP denied his claim finding that the medical evidence did not establish a causal relationship between his accepted employment incident and the necessity for a hip replacement surgery. Counsel requested reconsideration and submitted additional evidence. By decision dated September 25, 2009, OWCP denied modification of its prior decision. The Board reviewed this decision on September 2, 2010¹ and found that the medical evidence in the record was not sufficient to meet appellant's burden of proof to establish that he sustained an injury in the performance of duty on July 11, 2008.

Following the Board's decision, appellant requested reconsideration on March 9, 2011 and submitted a report from Dr. Schaaf dated February 20, 2011. In his report, Dr. Schaaf noted appellant's history of pushing a wire container on July 11, 2008. He diagnosed hip sprain superimposed on osteoarthritis. Dr. Schaaf noted that appellant's left hip worsened in terms of his ability to walk and function. He stated, "I believe the sprain of the arthritic hip was the cause of this worsening to a relative degree of medical certainty."

By decision dated June 10, 2011, OWCP accepted appellant's claim for left hip sprain. It specifically stated that his claim was accepted for left hip sprain only.

Counsel requested reconsideration on April 20, 2012 and stated that the evidence submitted confirmed that appellant's left hip replacement surgery was related to his July 11, 2008 work injury. He submitted medical records from Dr. Schaaf dated April 2, 2009 through April 20, 2012. In a note dated May 7, 2010, Dr. Schaaf reported that appellant has hit by a forklift driver on the left greater trochanteric region resulting in pain. He completed a note dated October 7, 2011 and stated that appellant sustained a work injury on August 23, 2011 which consisted of twisting of his trunk with his legs fixed to the floor. Dr. Schaaf stated that this resulted in damage to his left hip replacement and left hip pain.

By decision dated April 30, 2012, OWCP declined to reopen appellant's claim for consideration of the merits. It noted that he had another left hip claim for May 6, 2010 which he was struck by a forklift while standing on a platform which was administratively approved. OWCP reviewed Dr. Schaaf's medical records and found that there was no discussion of the July 11, 2008 employment injury and appellant's hip replacement surgery.

Counsel requested reconsideration on June 6, 2012 and resubmitted medical records from Dr. Schaaf dated April 2, 2009 through January 3, 2012. He stated that these records confirmed that appellant's July 11, 2008 injury caused an aggravation of his left hip condition which led to the left hip replacement surgery. Counsel requested to expand appellant's accepted conditions to include left hip surgery.

¹ Docket No. 10-474 (issued September 2, 2010).

By decision dated June 25, 2012, OWCP declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit relevant new evidence or raise substantive legal questions.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at anytime on its own motion or on application by the claimant.² Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.⁴

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. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

Appellant filed a claim for left hip injury on July 12, 2008. He underwent a left hip replacement on August 14, 2008. OWCP accepted this claim for left hip strain on June 10, 2011. Appellant, through counsel, requested reconsideration on April 20 and June 6, 2012 and submitted treatment notes from Dr. Schaaf. OWCP declined to reopen his claim for consideration of the merits on April 30 and June 25, 2012, respectively.

As noted above, the Board does not have jurisdiction over the June 10, 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 of review of the merits of his claim. In his request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant argued that his left hip replacement surgery was due to his July 12, 2008 employment injury. As evidenced by the history of this case, this is not a new argument. Both the Board and OWCP have addressed appellant's claims for left hip surgery.

² 5 U.S.C. §§ 8101-8193, 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.608.

⁵ *M.E.*, 58 ECAB 694 (2007).

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(2) as he submitted reports from Dr. Schaaf which did not address the issue of whether appellant's left hip surgery was due to his July 12, 2008 employment injury. None of the reports submitted by him mention his July 12, 2008 employment injury. These reports are therefore not relevant to the issue of whether appellant's left hip replacement surgery was due to his July 12, 2008 employment injury. The medical evidence was not sufficient to require OWCP to reopen appellant's claim for consideration of the merits on April 30, 2012. Furthermore, appellant resubmitted the same reports in support of both his April 20 and June 6, 2012 requests for reconsiderations. As noted above, medical reports which are repetitive are not sufficient to require OWCP to reopen his claim for consideration of the merits.⁶ These repetitious and irrelevant reports were not sufficient to require OWCP to reopen appellant's claim for consideration of the merits on June 25, 2012.

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 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 as appellant has not submitted relevant new evidence or legal argument, OWCP properly declined to reopen his claim for consideration of the merits on both April 30 and June 25, 2012.

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 25 and April 30, 2012 are affirmed.

Issued: February 21, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board