

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 13-374  
Issued: June 5, 2013**

*Appearances:*  
*Paul H. Felser, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 18, 2012 appellant, through his attorney, filed a timely appeal from a June 29, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which denied his request for reconsideration without conducting a merit review. Because more than 180 days elapsed from the most recent merit decision dated April 12, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

This case has previously been before the Board. In an August 12, 1997 decision, the Board set aside OWCP decisions terminating appellant's compensation and remanded the case for further medical development as to whether his cervical condition after September 17, 1991 was caused or aggravated by the August 31, 1988 employment injury.<sup>2</sup> In a decision dated July 3, 2000, the Board affirmed a December 23, 1997 OWCP decision finding that OWCP met its burden of proof to terminate his wage-loss compensation, effective September 17, 1991, based on the report of Dr. James T. Williams, an impartial specialist. The Board reversed OWCP's termination of appellant's medical benefits and found that he had not established an emotional condition as a consequence of his accepted injury.<sup>3</sup> In a decision dated June 11, 2009, the Board affirmed OWCP decisions dated September 11, 2007, February 25, July 21 and September 4, 2008 finding that it properly denied his claim for a schedule award and his requests for reconsideration.<sup>4</sup> The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference.

On May 9, 2001 appellant requested reconsideration before OWCP. He asserted that the statement of accepted facts was incomplete and that Dr. Williams was not qualified to make an evaluation. In correspondence dated December 22, 2009, OWCP advised that the May 9, 2001 request for reconsideration was inadvertently overlooked but that it would be processed.

Appellant submitted a May 31, 2001 report from Dr. Mark J. Hontas, a Board-certified orthopedic surgeon, who opined that appellant had 10 percent permanent impairment as a result of his work injury. In a May 11, 2009 report, Dr. Hontas noted treating appellant for neck pain and radiculopathy since 1990. He stated that a magnetic resonance imaging (MRI) scan of the cervical spine revealed C5-6 left paracentral bulging of the disc material and osteophyte producing stenosis and flattening of the cervical cord.

Appellant was also treated by Dr. Marc S. Goldman, a Board-certified neurologist, from August 27, 2009 to January 14, 2010 for cervical neck pain, left arm and hand numbness which began in the 1990's and progressively worsened. Dr. Goldman diagnosed cervical spondylosis without myelopathy. In a January 21, 2010 report, he noted initially treating appellant on August 27, 2009 for cervical pain and radiating numbness tingling into his left arm and hand. Dr. Goldman addressed causal relationship noting that he had no information regarding the August 1, 1988 work injury. He advised that the diagnosed C5-6 disc spur with lateral recess

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<sup>2</sup> Docket No. 95-1104 (issued August 12, 1997). OWCP accepted that on August 31, 1988 appellant sustained contusions of the head, right shoulder, right elbow and neck while in the performance of duty. Appellant received appropriate continuation of pay and compensation and returned to work on July 5, 1990 for four hours per day on limited duty.

<sup>3</sup> Docket No. 98-870 (issued July 3, 2000). Subsequent to the Board's July 3, 2000 decision, the Board disposed of three other appeals on procedural grounds. In a December 18, 2001 order, the Board dismissed appellant's appeal for lack of jurisdiction. Docket No. 01-2150 (issued December 18, 2001). In an October 29, 2003 order, the Board remanded the case to OWCP for reconstruction of the case record. Docket No. 03-35 (issued October 29, 2003). In a May 2, 2005 order, the Board dismissed appellant's appeal for lack of jurisdiction and also dismissed appellant's petition for reconsideration in 03-35. Docket No. 03-35 & 04-1180 (issued May 2, 2005).

<sup>4</sup> Docket 08-2448 (issued June 11, 2009), *order denying petition for recon.* (September 17, 2009).

stenosis could be traumatic or degenerative and advised that identifying whether or not there was a causal relationship between this abnormality and a 1988 injury would be difficult and he could not provide an opinion with any degree of medical certainty. An MRI scan of the cervical spine dated September 2, 2009 revealed cervical spondylosis, C2-3 osteophyte, degenerative disc disease of C3-4, C4-5, C5-6 and C6-7 and left side disc protrusion with disc osteophyte.

In a decision dated February 11, 2010, OWCP denied modification of the June 3, 2000 decision.

Appellant through his attorney requested reconsideration. He submitted a May 8, 1990 report from Dr. Adrian Blotner, a Board-certified psychiatrist, who opined that appellant's neck pain, insomnia and anxiety were significantly contributed to by the August 31, 1988 injury. Appellant also noted a May 2, 2002 report by an OWCP medical adviser, who opined that appellant's herniated cervical disc at C5-6 was work related. Both of the reports were of record and previously considered by OWCP. Appellant submitted August 12 and October 12, 2010 reports from Dr. Goldman who treated appellant for cervical pain, numbness and tingling increasing since the 1988 injury. He was diagnosed with cervical spondylosis without myelopathy. A September 30, 2010 x-ray of the MRI scan of the cervical spine revealed cervical spondylosis without myelopathy with a broad-based protrusion noted at C5-6.

In a decision dated April 12, 2011, OWCP denied modification of the prior decisions.

On April 11, 2012 appellant requested reconsideration. He asserted that he had multiple claims for similar injuries which should have been combined and reviewed as a whole with respect to issues of continuing residual and disability. Appellant noted that OWCP did not justify the termination of benefits as the position offered was not suitable. The referee physician, Dr. Williams, should not have been afforded the weight of the evidence because he previously performed a fitness-for-duty examination of appellant. He asserted that appellant's compensation benefits should be reinstated as he was not able to return to his date-of-injury job at the time of termination and he continued to have work-related residuals. Appellant submitted a prescription note dated December 29, 1986 from Dr. L.J. Clanton, a family practitioner; correspondence from the employing establishment dated April 21 and June 25, 1987; prescription notes from Dr. Leslie Hightower, a Board-certified internist, dated August 18, 1987; a routing slip from Dr. Edward Lacour, a surgeon, dated September 22, 1987; reports from Dr. Joseph M. Epps, a Board-certified neurosurgeon, dated October 24, 1989 and June 27, 1990, an employing establishment job offer dated February 1, 1990; reports from Dr. Hontas dated February 5, 1990 to October 2, 2010; reports from Dr. Douglas Swift, a Board-certified physiatrist, dated November 4, 1993 to October 11, 1995; reports from Dr. Goldman dated August 27, 2009 to October 12, 2010 and x-rays of the cervical spine dated September 2, 2009 and September 30, 2010, all previously of record.

In an April 21, 2011 report, Dr. Goldman treated appellant for cervical pain, left arm weakness, numbness and tingling with shooting pain into the left arm since his injury of 1988. He noted findings of right grip strength of 4/5 and normal left grip strength, normal gait without pathological reflexes. Dr. Goldman diagnosed cervical spondylosis without myelopathy. Appellant also asserted that he developed an emotional condition due to his accepted work injury; that the referee physician, Dr. Goldman, was not qualified, that he was not provided with

a job capacity assessment or work hardening program; and he continued to have residuals of his work injury.

In a June 29, 2012 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>5</sup> 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 obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(2) Advances a relevant legal argument not previously considered by [OWCP];  
or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>6</sup>

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.<sup>7</sup>

### **ANALYSIS**

OWCP's most recent merit decision dated April 12, 2011 denied modification of the decision terminating appellant's wage-loss compensation benefits and denied his claim for an emotional condition.

The Board does not have jurisdiction over the April 12, 2011 OWCP merit decision. The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), for OWCP to reopen the case for further review of the merits of the claim. In his request for reconsideration, appellant did not content 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.

Appellant asserted that he had multiple claims for similar injuries, which should have been combined and reviewed as a whole with respect to issues of continuing residuals and

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Id.* at § 10.608(b).

disability. He contended that OWCP did not justify termination of benefits as the position was not suitable. Appellant also argued that the referee physician, Dr. Williams, should not have been afforded the weight of the evidence because he previously performed a fitness-for-duty examination. He asserted that his compensation benefits should be reinstated as he was not able to return to his date-of-injury job at the time of termination and he continued to have work-related residuals. In letters dated April 26, 2011 to April 6, 2012, appellant asserted that he developed an emotional condition due to his accepted work injury, that he was never provided with a job capacity assessment or work hardening program. These factual assertions were previously considered by OWCP and do not establish legal error by OWCP or constitute a new and relevant legal argument. The underlying issue in this case is whether appellant continued to have disabling residuals of his work-related conditions and if he developed an emotional condition causally related to his work injury. That is a medical issue which must be addressed by relevant medical evidence.<sup>8</sup> A claimant may be also entitled to a merit review by submitting new and relevant evidence; but appellant did not submit any new and relevant medical evidence in support of his request.

Appellant submitted a prescription note dated December 29, 1986 from Dr. Clanton; correspondence from the employing establishment dated April 21 and June 25, 1987; prescription notes from Dr. Hightower dated August 18, 1987; a routing slip from Dr. Lacour dated September 22, 1987; reports from Dr. Epps dated October 24, 1989 and June 27, 1990; an employing establishment job offer dated February 1, 1990; a March 26, 1990 letter from OWCP to appellant; reports from Dr. Hontas dated February 5, 1990 to October 2, 2010; reports from Dr. Swift dated November 4, 1993 to October 11, 1995; OWCP decisions dated July 17, 1991 and July 6, 1993; the Board decision dated August 12, 1997; reports from Dr. Goldman dated August 27, 2009 to October 12, 2010; and x-rays of the cervical spine dated September 2, 2009 and September 30, 2010. The evidence is duplicative of that previously submitted and considered by OWCP in its prior decisions. 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.<sup>9</sup> Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted an April 21, 2011 report from Dr. Goldman, who treated appellant in follow up for cervical pain, left arm weakness, numbness and tingling with shooting pain into the left upper extremity increasing since his injury of 1988. Dr. Goldman noted that appellant's symptoms were unchanged. He noted findings and diagnosed cervical spondylosis without myelopathy. The Board notes that these reports are similar to Dr. Goldman's prior August 27, September 8 and October 22, 2009, January 21, August 12 and October 12, 2010 and August 28, 2012 reports, which were previously considered by OWCP in its September 7, 2012 decision. Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.<sup>10</sup>

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<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>9</sup> See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>10</sup> See *id.*

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 asserted that he had continuing residuals of his accepted condition, that OWCP failed to accept his work-related emotional condition and that his claims should have been consolidated. As noted, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2013  
Washington, DC

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

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

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