

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

D.C., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
Washington, DC, Employer**

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**Docket No. 13-1713
Issued: November 20, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 9, 2013 appellant filed a timely appeal of a January 10, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because over 180 days elapsed between the most recent merit decision of December 14, 2011 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case, pursuant to the Federal Employees' Compensation Act¹ (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 on the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 28, 2010 appellant, then a 47-year-old customs officer, filed an occupational disease claim alleging that on June 23, 2007 he developed an autoimmune response initiated by

¹ 5 U.S.C. § 8101 *et seq.*

food illness and subsequent bowel infection which occurred while he was on temporary duty in Chonburi, Thailand. In a letter dated July 7, 2010, OWCP requested additional factual and medical evidence in support of his claim. By decision dated September 21, 2010, it denied appellant's claim on the grounds that he failed to provide any supportive factual or medical evidence regarding his alleged occupational disease.

Appellant requested reconsideration on September 20, 2011 and alleged that he was on official government travel from June 19 through 26, 2007. He stated on June 23, 2007 he became ill with a food illness while in Pattaya, Thailand. Appellant developed symptoms of Reiter's syndrome on July 11, 2011.

In support of his claim, appellant submitted medical evidence. On July 22, 2007 Dr. Janice Blanchard, a physician Board-certified in emergency medicine, examined appellant and diagnosed Reiters' syndrome and urethritis. Dr. Victoria K. Shanmugam, a Board-certified rheumatologist of professorial rank, in a report of July 23, 2007, diagnosed polyarticular inflammatory arthritis most likely secondary to either his chlamydia infection or the recent diarrheal illness. In a report dated August 17, 2007, Dr. Shanmugam found persisting inflammatory arthritis of the left ankle and pain in the bilateral knees. She found persisting synovitis following an episode of reactive arthritis.

In a decision dated December 14, 2011, OWCP found that appellant had submitted sufficient medical evidence to establish diagnosed conditions including reactive arthritis secondary to chlamydia, persistent synovitis, Reiter's syndrome and urethritis. However, it denied appellant's claim on the grounds that there was no medical opinion evidence which established the causal relationship between appellant's diagnosed conditions and his employment.

Appellant requested reconsideration of the December 14, 2012 decision on December 24, 2012. He submitted an article from a medical publication regarding Reiter's syndrome as well as an article from Wikipedia discussing reactive arthritis. Appellant also submitted a copy of his calendar indicating his travel in June 2007.

By decision dated January 10, 2013, OWCP declined to reopen appellant's claim for consideration of the merits. It found that appellant had not submitted relevant new evidence requiring review of the merits of his claim.

LEGAL PRECEDENT

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time 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

² 5 U.S.C. §§ 8101-8193, 8128(a).

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 not 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. 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 validity.⁵

ANALYSIS

Appellant filed a claim for occupational disease on June 28, 2010. By decision dated December 14, 2011, OWCP denied the merits of his claim. Appellant requested reconsideration on December 14, 2012.

As noted above, the Board does not have jurisdiction over the December 14, 2011 OWCP merit decision denying his occupational disease claim. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) requiring OWCP to reopen the case of review of the merits of his claim. In support of his December 14, 2012 request for reconsideration, appellant did not identify or show that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a new and relevant legal argument.

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)(3) as he submitted no new medical evidence. Appellant submitted excerpts of medical publications. The Board has held that excerpts of publications medical or otherwise are of no evidentiary value in establishing a claim as they are of general application and are not determinative as to whether specific conditions or disability were the result of the employment. This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.⁶ As appellant did not submit a physician's opinion interpreting the medical publications, he failed to submit pertinent new and relevant medical evidence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.608.

⁵ *M.E.* 58 ECAB 694 (2007).

⁶ *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

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 met any of the criteria to warrant a merit review, OWCP properly declined to reopen his claim for consideration of the merits on January 10, 2013.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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