United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 14-545**
	)	**Issued: June 18, 2014**
DEPARTMENT OF HOMELAND SECURITY, READINESS SUPPORT OFFICE, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2014 appellant filed a timely appeal from a November 7, 2013 nonmerit decision of the Office of Workers' Compensation Programs' (OWCP).[1] Because more than 180 days has elapsed between the last merit decision dated June 10, 2013 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim, pursuant to Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.[3]

[1] The Board notes that appellant submitted additional evidence to the record following OWCP's November 7, 2013 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).

[2] 5 U.S.C. §§ 8101-8193.

[3] For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 20, 2012 appellant, a 47-year-old administrative assistant, filed a Form CA-2 claim for benefits, alleging that he aggravated a preexisting allergy/respiratory condition after being exposed to irritants at an adjacent construction site. OWCP accepted the claim for allergic reaction to dust at work site and bronchospasm on January 9, 2013.

By letter dated January 22, 2013, the employing establishment requested that OWCP reconsider its acceptance of appellant's claim. It stated that it had already offered him a reasonable accommodation as part of an internal administrative process required by another federal law, though this did not constitute an admission of any liability, error or abuse. The employing establishment contended that there was no causal relationship between the alleged exposure and the accepted conditions of allergic reaction to dust at work site and bronchospasm. It denied that appellant had sustained a bronchial spasm due to dust exposure from the adjacent construction site, stating that his physician's note and diagnosis was received 25 days after the alleged exposure. The employing establishment further stated that neither appellant nor his physician presented a threshold of dust or allergen particle levels that negatively affected him; nor did they explain how the diagnosis date is linked to the accepted condition. It further asserted that appellant concealed the fact that his home was located in a construction zone since 2008, which contained many of the irritants to which he had attributed his accepted conditions.

By letter dated April 10, 2013, the employing establishment reiterated its contention that OWCP should rescind its acceptance of appellant's allergic reaction to dust at work site and bronchospasm conditions.

In a memorandum dated November 6, 2012, received by OWCP on May 1, 2013, an employing establishment study indicated that the General Services Administration had performed indoor air quality monitoring in three of the trailers at his work site. The project involved area sampling for indoor air quality parameters including temperature, relative humidity, carbon dioxide, carbon monoxide, total volatile organic compounds, respirable dust, particulate characterization, viable fungi and viable bacteria; the survey was conducted in response to occupancy concerns regarding indoor air quality. The employing establishment conducted an air sample test and provided the results of air samples taken in three of the trailers and then compared this sample to outside air samples taken at that same location. The study concluded that there was no difference in the air quality inside appellant's workplace and outside his workplace; all of the parameters measured were within standard indoor air quality guidelines. The employing establishment therefore asserted that he had not been exposed to any potentially harmful substances.

By letter dated May 8, 2013, OWCP advised appellant that it had prematurely accepted his claim for allergic rhinitis and bronchospasms. It advised him that in an occupational disease claim, his burden requires submission of a factual statement identifying employment factors

alleged to have caused or contributed to the presence or occurrence of the disease or condition and medical documentation, with rationale, supporting that the alleged employment factors caused or contributed to the diagnosed condition. OWCP stated that it had received additional information; *i.e.*, an air quality sample report, after the acceptance of appellant's claim which indicated that there was no difference in the air quality inside his workplace and outside his workplace.

OWCP further advised appellant that it had yet to receive any medical documentation which supported a causal relationship between his diagnosed conditions and his alleged work factors. It informed him that, under the Director's own motion, it was reopening his claim for further development. OWCP advised appellant that it was possible it would issue a new decision that rescinded its January 9, 2013 decision accepting his claim.

In a May 16, 2013 report, Dr. David M. Luse, a specialist in internal medicine, stated that he had been treating appellant since September 6, 2012 for reactive airway disease that was precipitated by construction that started several weeks prior to the visit. He related that his earliest diagnosis of respiratory issues was made in May 2007, at which time appellant was diagnosed with allergic rhinitis and chronic sinusitis. Dr. Luse stated:

> "[Appellant's] examination in September 2012 demonstrated significant expiratory wheezing bilaterally. He was started on an inhaled steroid with albuterol as needed. [Appellant] did not return to the work site and was reevaluated October 1, 2012; symptoms had resolved and the inhaled steroid was no longer necessary. He was asked to return to the work site with temporizing measures that were ineffective including wearing a mask and using [an] air purifier. [Appellant] was exposed to dusty conditions outside. He was required to tour old buildings. When [appellant] was in the trailer, [co]workers were constantly coming in and out which brought the outside irritants inside. His symptoms returned with each time he had to return to the work site.
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> "[Appellant] was last seen in clinic on April 9, 2013 after not returning to the work site for … 'months.' His exam[ination] was normal at that visit and his subsequent pulmonary function tests were also normal. As I have stated in multiple previous forms and letters, [appellant] should not be stationed in locations that expose him to dust debris, high pollen counts, gas/chemical fumes or other significant airborne irritants. When [appellant] is not exposed to airborne irritants, he has no limitations to his work ability."

In a statement dated May 22, 2013, received by OWCP on May 29, 2013, appellant alleged that the employing establishment unjustifiably controverted his claim and deliberately prevented OWCP from having access to factual and medical information pertaining to his claim; he alleged that management engaged in a conspiracy to rescind his compensation. He asserted that management demonstrated bias against him by refusing to acknowledge and accommodate his long-term health issues dating back to 2004 and especially from August 4 through September 11, 2012, the period when his respiratory conditions were aggravated. Appellant reiterated that his respiratory conditions were aggravated when he worked in a dusty working environment which contained contaminants, including asbestos; he alleged that on April 29,

2013 management placed him on administrative leave in order to prevent him from filing more claims. He alleged that, despite the fact that he informed management that his allergy mask and purifier unit did not work and that his treating physician twice recommended that he be removed from the work site, they directed/required him to drive golf carts and give tours in an extremely unhealthy working environment detrimental to his health.

With regard to the air quality tests that management conducted, appellant asserted that they were performed after his physicians recommended removal from St. Elizabeth's construction site in early September 2012 and were therefore irrelevant to his contention that the work site aggravated his respiratory conditions. He accused the employing establishment of failing to indicate that he was directed/required to drive and ride/wipe down golf carts in extremely hot and dusty working environment/zones, which increased the opportunity for him to inhale and ingest air borne contaminants inside/outside the trailer. Appellant further alleged that management failed to indicate that he was directed/required to perform tours inside Hitchcock Hall, where asbestos still existed. He stated that from August 2 to 29, 2012 he was required to perform several "hot work" jobs which exposed him to welding fumes, smoke, gases and dust. Appellant asserted that his condition improved when he was removed from this environment. He advised that management was currently processing his request for reasonable accommodations to remove him from the noxious work environment.

In letters dated May 29 and June 6, 2013, the employing establishment rebutted appellant's contentions. It denied that it deliberately obstructed his attempts to receive compensation and process his claim. Management indicated that appellant provided no documentation that he was exposed to asbestos at the work site; asbestos was removed from the work site in March 2011, 18 months prior to the filing of his claim of exposure to asbestos and other contaminants. The employing establishment asserted that he did not state that he was actually exposed to anything specific and suffered a medical condition as a result. It stated that although appellant alleged that his treating physician recommended removal from the St. Elizabeth's construction site in early September 2012 and air quality tests were performed after the fact, such tests were performed prior to his arrival at the work site as well as subsequent to his arrive; he did not provide the results of these tests to his treating physician, who issued this recommendation based on subjective complaints from appellant, not factual evidence. Management asserted that while he contended that his respiratory issues were activated when he was placed in a dusty working environment where air borne contaminates exist, he was exposed to contaminants at his home, where trees and grass were removed behind and around his home, thus creating additional sources of exposure.

The employing establishment further stated that appellant worked in an office that was protected from direct infiltration from the exterior doors and was surrounded by five-foot high fixed partitions. It asserted that the facility is in good condition, was only three years old and received regular janitorial service and common area dusting.[4] Appellant was provided with a

[4] In its May 30, 2013 letter, the employing establishment provided pictures and diagrams of the work site trailers and building interiors. In addition, it stated that appellant had engaged in a pattern of conduct in which he sought to prevent a thorough evaluation of the facts by withholding medical documentation from management and accurate, documented factual information from his medical providers, including air quality reports of the work site.

portable air purifier to operate within or adjacent to his workplace if needed; he was not required to spend any significant time outdoors.

By decision dated June 10, 2013, OWCP rescinded appellant's claim, finding that the medical evidence did not support that his claimed conditions were causally related to exposure to contaminants at his work site. It stated that although his treating physician stated generally that he had recently been exposed to a large quantity of dust at his workplace he did not provide objective medical reasoning for this opinion. OWCP noted that under section 10.303 of the Code of Federal Regulations simple exposure to a workplace hazard, such as an infectious agent, did not constitute a work-related condition entitling an employee to medical treatment under FECA. It therefore rescinded its acceptance of appellant's claim because the requirements were not met for establishing that he sustained an injury and/or medical condition that arose during the course of employment and within the scope of compensable work factors under FECA.

On June 24, 2013 appellant requested reconsideration.

Appellant submitted several e-mails between himself and management from February and June 2013, which indicated that he provided tours of the work site in August 2012 and June 2013 and which described the work site. He also provided correspondence with management pertaining to his workers' compensation claim, which indicated that he was requesting that one of his supervisors complete part of a Form CA-7 claim. Additionally, appellant submitted copies of e-mails which were previously submitted to OWCP and were part of the instant record.

Appellant also submitted sick leave requests, a copy of a May 13, 2013 memorandum from management and a handwritten diagram of the work site documents pertaining to air quality tests, a reassignment request letter; and numerous interoffice memoranda. In addition, he submitted a September 23, 2013 letter to management, which contained numerous accusations of misconduct on the part of appellant. None of these documents contained a medical report attributing his claimed conditions to exposure to contaminants during the claimed periods.

By decision dated November 7, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.[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.[6]

[5] 20 C.F.R. § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

[6] *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS

In the present case, OWCP rescinded acceptance of appellant's claim on June 10, 2013. As previously noted, the Board does not have jurisdiction over the June 10, 2013 decision. Appellant thereafter requested reconsideration, however, he has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. The evidence he submitted is not pertinent to the issue on appeal. On appeal, appellant reiterates his argument below that management was biased against him and orchestrated a campaign to obstruct his efforts to receive compensation and that it repeatedly hampered his efforts to obtain supporting medical evidence. He, however, has provided no corroboration or support for this contention. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP.

The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[7] The issue in this case is medical; *i.e.*, whether he submitted probative, rationalized medical evidence sufficient to establish that his claimed allergic reaction to dust at work site and bronchospasm conditions were caused or aggravated by exposure to contaminants at his work site. Appellant submitted numerous e-mails, correspondence and memorandum from the employing establishment. While some of these documents generally pertain to the processing of his workers' compensation claim, none of them contain medical evidence relevant to the issue in this case; moreover, many of these documents were previously submitted.[8] This evidence is therefore cumulative and duplicative.[9]

OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

[7] *See David J. McDonald*, 50 ECAB 185 (1998).

[8] The Board notes that the evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

[9] *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2014
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