United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 14-892**
	)	**Issued: June 19, 2014**
DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Albany, GA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 11, 2014 appellant filed a timely appeal from a February 27, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. As more than 180 days elapsed from the last merit decision dated January 2, 2014 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated January 2, 2014, the Board affirmed, as modified,[2] the November 9, 2012 and February 21, 2013 OWCP decisions finding that appellant had not filed a timely claim for compensation and that his June 12, 2012 occupational disease claim, assigned file number xxxxxx203, duplicated a December 16, 2002 occupational disease claim, assigned file number xxxxxx738.[3] In his 2002 occupational disease claim, appellant alleged that he sustained central nervous system conditions, including tachycardia due to exposure to Turco 6776. The Board found that his June 12, 2012 claim that he sustained an aggravation of preexisting PSVT due to exposure to Turco 6776 in the course of his federal employment duplicated his December 16, 2002 claim. The Board noted that appellant had not contended that his injury arose from any new exposure to employment factors nor did he submit medical evidence supporting that exposure after 2002 caused his claimed condition. The facts of the claim as set forth in the prior decision are hereby incorporated by reference.

On January 9, 2014 appellant requested reconsideration. He submitted copies of OWCP and Board decisions in his case and resubmitted medical evidence dated 1974 through 2013. Appellant also submitted a hospital report dated March 25, 2013 regarding his treatment for symptoms of a heart attack. He received follow-up treatment on April 23, 2013 and an electrocardiogram (EKG) on June 6, 2013.

Appellant further resubmitted a December 20, 2012 response from the employing establishment regarding his claim. On the form he indicated that he had timely filed claim number xxxxxx203. Appellant also resubmitted a January 22, 2010 decision by the Social Security Administration (SSA) finding that he was disabled and a May 19, 2011 decision by the Department of Veterans Affairs (DVA) continuing its determination that he had a 10 percent impairment due to supraventricular tachycardia.

By decision dated February 27, 2014, OWCP denied appellant's request for reconsideration finding that he did not submit evidence or raise an argument sufficient to warrant reopening his case for further review of the merits under section 8128.

On appeal, appellant argues that he continues to experience supraventricular tachycardia due to exposure to the chemical Turco 6776. He asserts that his supervisor had actual notice of his injury and that he obtained medical treatment from its dispensary. Appellant relates that the evidence established that his condition was employment related and that OWCP should not have considered it a duplicate claim.

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[2] The Board determined that he had timely filed his claim in file number xxxxxx203 for compensation as his supervisor had actual knowledge of his previously filed December 16, 2002 occupational disease claim. Nonetheless, the Board affirmed OWCP's denial as it was a duplicate claim.

[3] Docket No. 13-1310 (issued January 2, 2014). On June 12, 2012 appellant, then a 57-year-old former heavy mobile equipment mechanic, filed an occupational disease claim alleging that he sustained an aggravation of preexisting paroxysmal supraventricular tachycardia (PSVT) due to exposure to Turco 6776 in the course of his federal employment. He indicated that he became aware of his condition and its relationship to his federal employment in May 2002. Appellant was last exposed to the work factors identified as causing his condition on December 14, 2004, when he was removed from employment. OWCP assigned the claim number xxxxxx203.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,[4] 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.[5] 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.[6] 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.[7]

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.[8] 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.[9] 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.[10]

ANALYSIS

The last merit decision in this case is the Board's January 2, 2014 decision finding that appellant's June 12, 2012 occupational disease claim duplicated a prior occupational disease claim dated December 16, 2002. On January 9, 2015 he requested reconsideration before OWCP.

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 for review of the merits of the claim. In his January 9, 2014 request for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not identify a specific point of law or show that it was erroneously applied or interpreted. 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 in this instance appellant did not submit any pertinent new and relevant medical evidence. Appellant resubmitted evidence previously considered by OWCP, including

[4] *Supra* note 1. 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 her own motion or on application."

[5] 20 C.F.R. § 10.606(b)(3).

[6] *Id*. at § 10.607(a).

[7] *Id*. at § 10.608(b).

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

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

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

medical evidence dated 1974 to 2013, a January 22, 2010 SSA determination, a May 19, 2011 decision by the DVA, a December 20, 2012 statement from the employing establishment and copies of decisions by OWCP and the Board in his claim. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[11]

Appellant also submitted a hospital report dated March 25, 2013, a treatment note dated April 23, 2013 and the results of an EKG on June 6, 2013. None of this evidence, however, pertained to the relevant issue of whether his June 12, 2012 occupational disease claim duplicated his December 16, 2002 occupational disease claim. It does not address whether any exposure to Turco 6776 after 2002 caused his condition. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.[12]

On appeal, appellant maintains that he still has symptoms of supraventricular tachycardia due to exposure to the chemic Turco 6776 and that the weight of the evidence establishes that his condition is causally related to employment. He further argues that his supervisor had actual notice of his injury and that he obtained medical treatment from its dispensary. The issue, however, is whether appellant submitted new evidence or argument sufficient to warrant reopening his case for further consideration of whether his June 12, 2012 occupational disease claim duplicated a December 16, 2002 occupational disease claim.

Appellant asserts that OWCP should not have considered his claim a duplicate claim and should have reviewed all the evidence. He did not, however, submit any evidence in support of his contention.

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.

CONCLUSION

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

[11] *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

[12] *Id.*; *see also Freddie Mosley*, 54 ECAB 255 (2002).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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