

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

J.G., Appellant)	
)	
and)	Docket No. 13-1542
)	Issued: March 12, 2014
DEPARTMENT OF THE NAVY, NAVAL AIR)	
WEAPONS STATION, China Lake, CA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2013 appellant filed a timely appeal of the June 5, 2013 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 of May 18, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim 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 under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This claim has previously been before the Board. In a February 13, 2013 decision, the Board affirmed OWCP's decisions dated May 9 and July 26, 2012. The Board found that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1) in claim numbers xxxxxx204 and xxxxxx616.² In a May 18, 2010 decision, the Board affirmed a December 19, 2008 decision which denied appellant's claim for an attendant's allowance and a March 20, 2009 decision which denied his request for reconsideration.³ In a July 26, 2006 decision, the Board affirmed an October 11, 2005 OWCP decision which denied his reconsideration request as untimely and failed to establish clear evidence of error.⁴ The facts of the case are set forth in the Board's prior decisions and are incorporated herein by reference.

The evidence previously of record includes reports from Lawrence J. Coates, Ph.D., a licensed clinical psychologist, dated June 3 and September 21, 1994. He opined that appellant's cervical condition aggravated his psychiatric condition and that he could not work or manage himself at home. On January 9, 2007 Dr. Coates advised that appellant's wife was his caregiver as appellant required specific direction and assistance in activities of daily living such as eating, bathing and toileting. He stated that appellant was sufficiently incapacitated to require the assistance of an attendant to help him with his activities of daily living and, without an attendant, he would be more than likely to require hospitalization. Appellant's incapacitation was directly related to his mental disorder. In a June 4, 2008 report, Dr. Coates again recommended appellant's wife as his attendant. He noted that appellant's paranoid schizophrenia manifested itself in significant suspicion of other people and that his wife was the ideal caretaker because she was present in the home and knew how to attend to his activities of daily living. On June 25, 2008 Dr. Coates reported meeting appellant's wife three times for training and instruction. He kept in telephone contact with her to revise instructions as needed. On November 18, 2008 Dr. Coates again requested that authorization for attendant care be retroactive to 1994, which was the onset of appellant's psychological illness. He reiterated that appellant was unable to function in terms of his activities of daily living without the guidance of his wife.⁵

On March 7 and May 21, 2013 appellant requested reconsideration. In a statement dated June 4, 2012, he asserted that OWCP erred in combining his occupational disease claim for an injury sustained on May 6, 1994 with his January 14, 1984 orthopedic injury claim while working as a firefighter. OWCP should have created a new stress claim. Appellant contends that he was owed a pay differential between his two positions and disability compensation with attendant pay back to 1994. In a July 4, 2012 statement, he asserted total disability. Appellant submitted evidence previously of record. In a report dated May 7, 2013, Dr. Coates noted

² Docket 12-1688 (issued February 13, 2013).

³ Docket No. 09-1947 (issued May 18, 2010).

⁴ Docket No. 06-201 (issued July 26, 2006). OWCP accepted appellant's claim for neck strain, herniated disc at C5-6 and later accepted a permanent aggravation of paranoid schizophrenia. It authorized a cervical laminectomy fusion which was performed on February 17, 1984. Appellant was granted disability retirement on February 28, 1985. He later elected to receive benefits under FECA.

⁵ 20 C.F.R. § 10.314(a) provides that payments may be authorized under FECA, so long as the personal care services have been determined to be medically necessary and provided by a home health aide licensed practical nurse or similarly trained individual.

treating appellant since 1994 for schizophrenia as a result of a work injury related to his accounting job in 1994. He saw appellant two times a week for individual psychotherapy but noted that appellant continued to have significant periods of confusion and paranoia with depression that was consistent with his diagnoses. Appellant had an ongoing problem associated with schizophrenia and acquired a physical attendant and had various signs of decompensation that required assistance with activities of daily living. Dr. Coates noted that appellant continued to have symptoms of schizophrenia, paranoid type, as well as suspicion of other people and unprovoked agitation. He opined that appellant had an ongoing need of assistance in the form of an attendant because of his psychiatric problem and required assistance since his injury in 1994. Dr. Coates noted that appellant was previously approved for an attendant, but after a year, attendant pay was stopped and he requested that the attendant pay be reinstated.

In a June 5, 2013 decision, OWCP denied appellant's reconsideration request on the grounds that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁶ 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 provides 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:

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

“(ii) Advances a relevant legal argument not previously considered by the OWCP;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁷

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.⁸

ANALYSIS

The Board's May 18, 2010 decision affirmed a December 19, 2008 OWCP decision which denied appellant's claim for an attendant's allowance. OWCP denied his reconsideration request, without a merit review and appellant appealed this decision.

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.608(b).

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his reconsideration request, appellant did not show 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.

In a statement dated June 4, 2012, appellant asserted that OWCP erred in combining his occupational disease claim for an injury sustained on May 6, 1994 with his January 14, 1984 orthopedic injury while working as a firefighter. He asserts that OWCP should have created a new stress claim. Appellant contends that he is owed a pay differential between his two positions and disability compensation and attendant pay back to 1994. In a July 4, 2012 statement, he asserts that he is owed total disability. Appellant's assertions do not establish a legal error by OWCP or constitute a new and relevant legal argument. The underlying issue in this claim is whether appellant was entitled to an attendant allowance before 1999. This is a medical issue which must be addressed by relevant medical evidence.⁹ A claimant may be 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 claim.

Appellant submitted a February 21, 1984 report from Dr. Robert C.W. Jones, Jr., reports from Dr. Coates, a psychologist, dated January 9, 2007 to July 2, 2010, an OWCP note authorizing an attendant allowance, a job description, an OWCP decision dated May 9, 2012 in another claim and OWCP's July 26, 2012 decision. However, these documents are duplicative of evidence previously submitted and considered by OWCP. 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.¹⁰ Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a May 7, 2013 report from Dr. Coates who noted treating appellant since 1994 for schizophrenia as a result of a work-related injury. Dr. Coates noted that appellant continued to have significant periods of confusion and paranoia and depression consistent with his diagnoses. He noted that appellant continued to have symptoms of schizophrenia, paranoid type, as well as suspicion of other people and unprovoked agitation. Dr. Coates opined that appellant had an ongoing need of assistance in the form of an attendant because his psychiatric problem and needed assistance since his injury in 1994. He also noted that appellant was previously provided an attendant for a year and requested the attendant be reinstated. The Board notes that this report, while new, is similar to Dr. Coates' prior reports dated June 3 and September 21, 1994, January 9, 2007, June 4, June 25 and November 18, 2008 and January 17, 2012 which were previously considered by OWCP and found to be insufficient on the need for an attendant. Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.¹¹

⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁰ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984) (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).

¹¹ *Id.*

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). He 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 asserts that OWCP improperly declined to review his case and believed that several errors were made and he was owed compensation for his fireman injury and for his accounting job and for attendant pay back to 1994. As noted above, the underlying issue in this case is whether appellant was entitled to attendant allowance prior to 1999. These are medical issues which must be addressed by relevant medical evidence. Also, as noted, the Board does not have jurisdiction over the merits of the claim. The Board notes that a new report from Dr. Coates dated May 17, 2013 is similar to his prior reports submitted and considered by OWCP in its decision. As noted, evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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