

FACTUAL HISTORY

This case has previously been before the Board. By decision dated December 17, 2010, the Board affirmed an October 27, 2009 decision denying appellant's request to reopen his case for further merit review under 5 U.S.C. § 8128.² The Board affirmed in part and reversed in part a September 29, 2009 decision terminating his compensation and authorization for medical benefits effective March 15, 2009. The Board determined that the opinion of Dr. Harold H. Alexander, a Board-certified orthopedic surgeon and OWCP referral physician, was insufficient to establish that appellant had no further disability due to his low back strain with sciatica and L4-5 disc bulge. It found, however, that the opinion of Dr. Brian Teliho, a Board-certified psychiatrist and referral physician, established that he had no further disability or need for medical treatment due to his accepted post-traumatic stress disorder. By decision dated August 2, 2013, the Board affirmed OWCP's February 21, 2013 decision terminating appellant's compensation on the grounds that he had no further disability as a result of his May 24, 1983 work injury.³ The Board found that the opinions of Dr. Alexander Doman, a Board-certified orthopedic surgeon, and Dr. R. Michael Prudent, a Board-certified psychiatrist, constituted the weight of the evidence and established that he had no further employment-related disability. The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference.

On December 5, 2013 appellant requested reconsideration. In an accompanying letter dated September 25, 2013, he disagreed with Dr. Doman's finding that he had age-related degenerative disc disease, noting that his attending physician informed him that his back injury would eventually cause degenerative disc disease. Appellant further asserted that Dr. Doman's diagnosis of age-related degenerative disc disease would prevent him from performing his regular employment duties as a warehouse worker. He noted that the employing establishment had closed its warehouses and questioned whether any agency would hire him given his condition. Appellant maintained that Dr. Prudent could not comment on whether he sustained PTSD as a result of his back injury. He noted that Dr. Prudent attributed his symptoms of PTSD to his experiences in Vietnam. Appellant related that a physician at the Department of Veterans Affairs (DVA) determined that he had PTSD. He experienced difficulty finding a physician who would treat him for a federal workers' compensation injury. Appellant maintained that OWCP established only that he could perform a light-duty position. He asserted that March 12, 2009 report from Dr. Shel Sharpe, a psychiatrist, established that he had PTSD. Appellant resubmitted the March 12, 2009 report from Dr. Sharpe.

By decision dated May 15, 2014, OWCP denied appellant's request for reconsideration. It found that the evidence submitted was repetitious and insufficient to warrant reopening his case for further review of the merits under section 8128.

On appeal, appellant contends that he was following his appeal rights as instructed by the Board. He asserts that no agency was trying to assist him with his claim.

² Docket No. 10-878 (issued December 17, 2010). OWCP accepted that on May 24, 1983 appellant, then a 37-year-old warehouse worker, sustained low back strain with sciatica, a bulging disc at L4-5 and post-traumatic stress disorder (PTSD) in the performance of duty. It paid him compensation for total disability beginning in 1986.

³ Docket No. 13-995 (issued August 2, 2013).

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

In the most recent merit decision dated August 2, 2013, the Board affirmed OWCP's February 21, 2013 decision terminating appellant's compensation effective that date on the grounds that the weight of the medical evidence established that he had no further disability due to his accepted conditions of low back strain with sciatica, a bulging disc at L4-5 and PTSD. On December 5, 2013 appellant requested reconsideration of the termination of his compensation.

As noted, the Board does not have jurisdiction over a merit decision of 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 December 5, 2013 request for reconsideration, 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 not previously considered by OWCP. He disagreed with Dr. Doman's finding

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 his 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).

that his degenerative disc disease was due to age. Appellant's lay opinion, however, is not pertinent to the medical issue, which can only be resolved through the submission of probative medical evidence from a physician.¹¹ He contended that Dr. Doman's diagnosis of age-related degenerative disc disease would prevent him from performing his usual employment. The relevant issue, however, is whether an employment-related condition prevents appellant from performing his usual work duties.

Appellant asserted that Dr. Prudent did not address whether he sustained PTSD due to his back injury. In his April 10, 2012 report, Dr. Prudent questioned whether a back injury was sufficiently outside the scope of normal experience to cause PTSD. He further found, however, that it was not appropriate for him to reach such a determination regarding causation. The Board reviewed Dr. Prudent's opinion on prior appeal and found that it was sufficient to support that appellant had no further disability due to his PTSD. Consequently, appellant's contention is insufficient to warrant reopening his case for further merit review.

Appellant argued that a physician at the DVA diagnosed PTSD and that Dr. Sharpe's March 12, 2009 report established that he had the condition. The underlying issue in this case was whether OWCP properly terminated his compensation effective February 21, 2013 on the grounds that the medical evidence established that he had no further employment-related disability. That is a medical issue which must be addressed by relevant medical evidence.¹² As discussed, appellant's lay opinion does not constitute probative medical evidence from a physician.¹³

Appellant contended that the employing establishment would not rehire him as a warehouse worker. Again, however, the relevant issue is whether he has any further disability due to his May 24, 1983 work injury. Evidence or argument that does not address the particular issue involved does not warrant reopening a case for merit review.¹⁴

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence in this case. Appellant resubmitted a March 12, 2009 report from Dr. Sharpe. 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.¹⁵

On appeal, appellant asserts that he had not received assistance pursuing his claim and that he had followed his appeal rights as instructed by the Board. The Board's jurisdiction, however, is limited to reviewing final adverse decisions of OWCP issued under FECA.¹⁶

¹¹ *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹² *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹³ *See supra* note 11.

¹⁴ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

¹⁵ *See J.P.*, *id.*; *Richard Yadron*, 57 ECAB 207 (2005).

¹⁶ 20 C.F.R. §§ 501.2(c) and 501.3(a).

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 by OWCP or submit 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 OWCP properly denied appellant's request to reopen his case for further review of the merits under section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2014
Washington, DC

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

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

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