

FACTUAL HISTORY

This case was previously on appeal before the Board. On February 12, 2010 appellant, then a 38-year-old sales and systems distributor, filed a claim for traumatic injury alleging that on February 7, 2010 he hit his head on equipment, causing head trauma. OWCP denied appellant's claim on April 2, 2010 finding that he failed to submit medical evidence establishing a diagnosis as a result of the February 7, 2010 employment incident. Appellant requested a review of the written record by an OWCP hearing representative on April 27, 2010. The hearing representative affirmed OWCP's decision on August 5, 2010. Appellant informed OWCP that on October 27, 2010 he also had a fall where his teeth were dislodged. He, through his attorney, requested a second oral hearing on October 29, 2010. Appellant testified at this oral hearing that he had been working outside in 100 degree weather and, as he was leaving work, walked past a concrete picnic table and fainted. He alleged that he hit a concrete door and that his supervisors found him lying in a pool of blood with his teeth knocked out.

Appellant appealed to the Board and in a decision dated September 5, 2012² the Board noted that the medical evidence was not sufficient to establish an injury due to the February 2010 fall. The Board noted that his submitted evidence from three physicians who provide three different medical explanations for his fall -- classical vasovagal syncope likely related to prolonged standing, unclear cause, but nonepileptic fall and that the fall was not related to standing in the performance of duty. The Board found that appellant had sustained an unexplained fall on February 7, 2010 and that he had failed to submit the necessary medical opinion evidence to establish a medical condition resulted from this fall.

Appellant requested reconsideration on July 25, 2013 and alleged that he sustained dental injuries as a result of his February 7, 2010 fall. He submitted a report from Dr. Milton A. Peavey, a dentist, dated May 15, 2013 indicating that on August 3, 2010 the tooth root from number 9 was removed and appellant received a bridge from numbers 7 through 10. Dr. Peavey opined that the injuries to appellant's teeth were due to his recent fall. OWCP denied modification of its prior decision on August 7, 2013. The Board reviewed this decision on March 6, 2014³ and found that appellant had not established an injury causally related to the February 7, 2010 fall or that he had struck a picnic table or sustained injuries to his mouth or teeth. The Board further found that Dr. Peavey's report was not sufficiently factually detailed to establish that appellant's dental injuries resulted from the February 7, 2010 employment incident. The facts and circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

Counsel requested reconsideration on March 19, 2014 and submitted a legal brief in support of the request. He argued that appellant was alleging an occupational disease claim caused by long periods of standing at work dehydration or high temperatures and resulting in vasovagal syncope. Counsel then argued that appellant had three consequential injuries resulting from his vasovagal syncope, a fall on October 28, 2009, a fall on February 7, 2010 and a fall on August 3, 2010.

² Docket No. 11-1826 (issued September 5, 2012).

³ Docket No. 13-2118 (Issued March 6, 2014).

By decision dated April 4, 2014, OWCP declined to reopen appellant's claim for consideration of the merits. It stated that the brief was before the Board at the time of the March 6, 2014 decision and that if he felt that his claim was more properly adjudicated as an occupational disease claim, he should file the appropriate form.

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.⁴ 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 includes relevant and pertinent new evidence not previously considered by OWCP.⁵ 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.⁶

ANALYSIS

Counsel attempted to submit new and relevant legal argument in support of his request for reconsideration of appellant's traumatic injury claim. The Board finds that the arguments submitted are not relevant given the Board's findings on prior appeals. Appellant filed a notice of traumatic injury alleging that he fell on February 7, 2010 and the record also contains factual and medical evidence of an additional fall in August 2010. The Board has reviewed all the medical evidence currently in the record in its prior decisions and specifically found that he had not met his burden of proof to establish vasovagal syncope due to prolonged standing due to the variety of explanations for his fall proposed by his physicians. Therefore, the argument that appellant has met his burden of proof to establish a claim for vasovagal syncope has already been addressed and resolved by the Board and is not a new legal argument. The matter is *res judicata* and not subject to further review by the Board absent further review by OWCP.⁷

The current claim as adjudicated by OWCP and the Board is for a traumatic injury occurring on February 7, 2010. Appellant has not submitted any new legal arguments relevant to this claim.

Appellant has not demonstrated that OWCP improperly applied or interpreted a point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and has not presented any pertinent new and relevant medical evidence. Thus, he has not established that

⁴ See *supra* note 1.

⁵ 20 C.F.R. § 10.606.

⁶ *Id.* at § 10.608.

⁷ See *D.C.*, Docket No. 14-663 (issued June 26, 2014); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

OWCP abused its discretionary authority in declining to reopen appellant's case for further merit review.

CONCLUSION

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits on April 4, 2014.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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