

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

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G.T., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
L. STOKES CLEVELAND VETERANS )  
ADMINISTRATION MEDICAL CENTER, )  
Cleveland, OH, Employer )

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**Docket No. 15-1245  
Issued: December 4, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 13, 2015 appellant filed a timely appeal of the November 14, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed since the most recent merit decision dated August 19, 2013 and the filing of this appeal on May 13, 2015, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant filed a timely request for oral argument. After exercising its discretion, by order dated October 9, 2015, the Board denied his request as his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1245 (issued October 9, 2015).

## **FACTUAL HISTORY**

On October 11, 1983 appellant, then a 36-year-old medical technician, fractured his right ankle while on a motorcycle when he failed to negotiate a turn as he entered the employing establishment property. The employing establishment did not dispute that he was in the performance of duty at the time of this incident. OWCP accepted appellant's condition for bimalleolar fracture of the right ankle and expanded his claim to include osteomyelitis, infection at the fracture site, and deformity distal fibula of the right ankle. It authorized right ankle surgery which was performed on October 12 and November 30, 1983, March 23, 1984 and September 1997. Appellant stopped work on October 11, 1983 and returned to light-duty work on December 1, 1983. He was granted disability retirement on October 1, 2000.<sup>3</sup>

On September 7, 2012 appellant submitted a Form CA-2a, recurrence of medical treatment, asserting that in 2008, 2009, and 2011 he sustained recurrences causally related to his employment injury of October 11, 1983. He noted that in 2008, he was walking with a cane in his home and his ankle gave out and he fell into his entertainment center. Appellant noted in 2009 he walked from the basement upstairs and almost fell again. In 2011, after returning home, his right ankle gave out while ascending the front steps and he fell backwards and caught himself on the hand rail. Appellant reported retiring in 2000 and remaining unemployed since that time.

By letter dated October 4, 2012, OWCP advised appellant of the type of factual and medical evidence needed to establish his recurrence claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed recurrent condition and specific employment factors.

In support of his claim, appellant submitted an x-ray of the right ankle dated July 8 and 9, 2009 which revealed no acute fracture but an old fracture of the distal fibula with post-traumatic arthritic changes. A March 19, 2010 x-ray of the right foot revealed mild osteopenia, no definite fracture, small left calcaneal spur and extensive osteoarthritis of the right tibiotalar joint. X-rays of the right ankle dated January 19 and July 31, 2012 revealed an old fracture of the distal fibula with post-traumatic arthritic changes. A February 23, 2013 x-ray of the right ankle revealed a questionable nondisplaced distal fibular fracture with additional remote healed fracture of the distal fibula and severe degenerative changes of the ankle mortise joint.

On March 4, 2013 appellant underwent a computerized tomography (CT) scan of the right lower extremity which revealed a remote distal fibular fracture with prior external fixation hardware and significant degenerative changes of the ankle mortise joint on the right.

A July 26, 2012 report from a physician assistant noted treating appellant since 2002 for right ankle pain and arthritis. He noted appellant's right ankle condition has progressed and he required an ankle fusion.

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<sup>3</sup> On December 23, 1987 OWCP proposed to reduce compensation as the evidence established that appellant was no longer totally disabled, but rather partially disabled, and had the capacity to earn wages as a medical technologist, at the rate of \$8.00 an hour. In a decision dated February 5, 1988, it adjusted appellant's compensation benefits to reflect his wage-earning capacity as a medical technologist. Appellant filed a claim for a schedule award. In decisions dated September 17, 1991, April 6, 1995, April 18, 2002, February 6, 2003 and June 6, 2003, he was granted a schedule award for a total of 42 percent permanent impairment of the right leg.

On August 19, 2013 OWCP denied appellant's claim for a recurrence of medical treatment, finding that the evidence did not show a spontaneous worsening of his accepted condition.

On August 2, 2014 appellant requested reconsideration. In an accompanying August 11, 2014 letter, he asserted that he experienced a worsening of his original injury and needed further medical care. Appellant indicated that he has unsuccessfully attempted to obtain employment as a medical technologist at several hospitals and enrolled in a vocational rehabilitation program without success. He indicated that he underwent a third operation on his right ankle in 1997 and subsequently required a cane. Appellant indicated that his work restrictions were ignored by the employing establishment. He indicated that he continued to receive care at the Veterans Administration Medical Center. Appellant also submitted handwritten notes.

Appellant submitted an x-ray of the right ankle dated July 8, 2009, a March 19, 2010 x-ray of the right foot, a January 19, 2012 x-ray of the right ankle, a July 31, 2012 x-ray of the right ankle, a February 23, 2013 x-ray of the right ankle, a March 4, 2013 CT scan of the right lower extremity, and a copy of OWCP's decision dated August 19, 2013, all previously of record. Appellant submitted an enrollment record from the University of Maryland noting he was registered as an undergraduate in January 2001. He submitted a letter to Suburban Hospital human resources recruiter applying for a medical technologist position. Appellant submitted a marriage license dated May 8, 2003 and a divorce decree dated August 31, 2007. He submitted a note from Health First dated August 30, 2013, prepared by an unidentified individual who diagnosed right ankle fracture with hardware, arthritis, spinal stenosis, degenerative joint disease of the back, and neuropathic pain.

In a November 14, 2014 decision, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT**

Under section 8128(a) of FECA,<sup>4</sup> 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)(3) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

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

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

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>5</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3).

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.<sup>6</sup>

### ANALYSIS

OWCP denied appellant's recurrence of disability finding that the medical evidence did not demonstrate that the claimed recurrence of his medical condition was causally related to the accepted injury. Thereafter, it denied his reconsideration request, without a merit review.

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 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. In his August 11, 2014 request for reconsideration, he indicated that he experienced a worsening of his original injury and needed further medical care. Appellant indicated that he has unsuccessfully attempted to obtain employment as a medical technologist at several hospitals and enrolled in a vocational rehabilitation program without success.<sup>7</sup> He indicated that he had a third operation on his right ankle in 1997, uses a cane, and continues to receive care at a Veterans Administration hospital. Appellant indicated that his work restrictions were ignored by the employing establishment. These assertions do not show a legal error by OWCP or a new and relevant legal argument not previously considered by OWCP. The underlying issue in this case is whether appellant submitted medical evidence establishing that he sustained a recurrence of his medical condition causally related to the October 11, 1983 work injury. That is a medical issue which must be addressed by relevant new medical evidence.<sup>8</sup>

However, appellant did not submit any pertinent new and relevant medical evidence in support of his claim. He submitted an x-ray of the right ankle dated July 8, 2009, a March 19, 2010 x-ray of the right foot, a January 19, 2012 x-ray of the right ankle, a July 31, 2012 x-ray of the right ankle, a February 23, 2013 x-ray of the right ankle, a March 4, 2013 CT scan of the right lower extremity, and a copy of OWCP's decision dated August 19, 2013. However, these reports are duplicative of evidence previously submitted and were considered by OWCP in its decision dated August 19, 2013. 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.<sup>9</sup> Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a note from Health First dated August 30, 2013, prepared by an unidentified individual who diagnosed right ankle fracture with hardware, arthritis, spinal

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<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> The record indicates that appellant is not currently in receipt of wage-loss benefits, that he has claimed such benefits, or that he has requested modification of the February 5, 1988 loss of wage-earning capacity decision.

<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>9</sup> See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

stenosis, degenerative joint disease of the back, and neuropathic pain. There is no indication of who signed this report. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.<sup>10</sup> Thus, this report is insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted an enrollment record from the University of Maryland dated January 2001, a letter to Suburban Hospital human resources recruiter applying for a medical technologist position, a marriage license dated May 8, 2003, and a divorce decree dated August 31, 2007. As explained, the underlying issue in this claim is whether the medical evidence establishes that he sustained a recurrence of his accepted medical condition. These records are not relevant to this underlying medical issue. Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

On appeal, appellant asserts that he submitted sufficient evidence to establish that he sustained a recurrence of disability causally related to his October 11, 2013 work injury. He also asserts that OWCP failed to inform him that his claim was closed in 2012. The Board does not have jurisdiction over the merits of the claim.

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 constitute 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 for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>10</sup> See *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board