

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).

FACTUAL HISTORY

On November 20, 2012 appellant, then a 26-year-old clerk, filed a traumatic injury claim alleging that on September 24, 2012 he injured his left wrist in the performance of duty. He did not stop work.

By decision dated January 7, 2013, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish a diagnosed condition causally related to the accepted September 24, 2012 work incident. It considered the medical evidence submitted, including a November 19, 2012 emergency room report, November 20 and 27, 2012 reports from Paul L. Lankisch, Jr., a physician's assistant, and November 20 and 27, 2012 reports signed by Dr. Patrick Kunkler, Board-certified in family medicine.

In February 2013 OWCP received the previously considered November 27, 2012 report from Dr. Kunkler and the November 19, 2012 emergency room report signed by a nurse practitioner.

On December 9, 2013 appellant requested reconsideration. In an accompanying undated statement, he noted that he reported his injury to management without delay. Appellant believed that his wrist would improve without any medical care but it again began hurting after he loaded and packed many boxes of documents. He resubmitted a November 27, 2012 patient visit summary completed by a nurse practitioner.

In a statement dated December 2, 2013, James J. Dellinger, a manager, advised that on September 24, 2012 appellant advised him that he had injured his left wrist when it got caught between a cart and bookshelf. He did not initially believe that the injury was serious enough to seek medical care. On November 19, 2012 appellant advised Mr. Dellinger that the injury was more significant than at first thought and filed a workers' compensation claim.

By decision dated February 5, 2014, OWCP denied appellant's request to reopen his case for further review of the merits under section 8128(a). It found that the evidence submitted and arguments raised were either repetitive or immaterial and thus insufficient to warrant reopening the case for further merit review.

On appeal appellant argued that the medical evidence supported that he was injured at work and that his manager provided evidence that appellant immediately reported the work injury.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ 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.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

ANALYSIS

In a decision dated January 7, 2013, OWCP denied appellant's traumatic injury claim as the medical evidence was insufficient to establish a left wrist condition as a result of the accepted September 24, 2012 work incident. On December 8, 2013 appellant requested reconsideration. By decision dated February 5, 2014, OWCP denied his request for reconsideration after finding that he did not submit evidence or raise an argument sufficient to warrant reopening the case for further merit review.

As noted above, the Board does not have jurisdiction over the January 7, 2013 OWCP merit decision. 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. The Board finds that in the December 8, 2013 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument not previously considered. Appellant asserted that he

³ 5 U.S.C. § 8101 *et seq.* 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."

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608(b).

⁷ *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

⁸ *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

⁹ *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

informed his supervisor promptly of his injury, which he believed would soon improve. In a December 2, 2013 statement, Mr. Dellinger confirmed that appellant told him that he injured his wrist on September 24, 2012 when he caught it between a cart and bookshelf. On November 19, 2012 he advised Mr. Dellinger that his injury was not improving, sought medical care and filed his traumatic injury claim. Mr. Dellinger's statement, however, is not relevant to the underlying issue in this case, which is whether the medical evidence is sufficient to show that appellant sustained a left wrist condition causally related to the accepted November 19, 2012 work incident. As this is a medical issue, it must be resolved by relevant medical evidence.¹⁰ Evidence or argument that does not address the particular issue involved does not warrant reopening a case for merit review.¹¹

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence. However, appellant did not submit any pertinent new and relevant medical evidence in this case. He resubmitted the November 19, 2012 emergency room report, the November 27, 2012 patient visit summary and the November 27, 2012 report from Dr. Kunkler. OWCP, however, had previously considered this evidence in its January 7, 2013 decision. 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.¹²

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 to reopen his case for further review of the merits under section 8128.

¹⁰ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

¹² See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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