



## **FACTUAL HISTORY**

On September 5, 2012 appellant, then a 30-year-old mason helper, filed a traumatic injury claim alleging that he sustained a left arm injury in the performance of duty. He alleged that a tree branch hit his arm while he was picking up trash and waste material. Appellant stopped work on September 5, 2012. His claim was initially accepted for contusion of the left shoulder and later expanded to include complex regional pain syndrome of the left arm. Appellant received wage-loss compensation from October 21, 2012 to April 20, 2013 and from May 5 to 18, 2013. On May 22, 2013 he was terminated by the employing establishment.

OWCP referred appellant to Dr. Fernando Rojas, a Board-certified orthopedic surgeon.<sup>2</sup> In a June 21, 2013 report, Dr. Rojas noted the history of injury and diagnosed shoulder contusion. He also advised that appellant might either have complex regional pain syndrome, or brachial plexus or a nerve root avulsion problem caused by his work injury. Dr. Rojas recommended appellant's referral to a neurosurgeon.

On August 14, 2013 OWCP referred appellant to Dr. Basil M. Yates, a Board-certified neurosurgeon, for a second opinion examination.<sup>3</sup> The examination was scheduled for September 3, 2013 in Hialeah, Florida. Appellant was advised that if he did not attend his appointment and could not establish good cause for his failure to appear then OWCP could find that he obstructed the examination and suspend his compensation benefits until the refusal to submit or obstruction ended. He was further advised that if he could not attend his appointment he should call to reschedule. Appellant was provided with a Form OWCP-957 allowing him to claim reimbursement for any travel-related expenses. OWCP requested that appellant contact OWCP if he did not understand any part of the letter.

An August 30, 2013 telephone call memorandum indicated that appellant's counsel called to advise that appellant could not attend the scheduled examination as he had no way to travel to Florida from Puerto Rico. OWCP indicated that it returned the call on September 3, 2013 and asked that appellant call OWCP.

On September 4, 2013 OWCP's medical scheduler advised that appellant failed to appear at his scheduled second opinion examination.

In a September 5, 2013 letter, appellant's counsel inquired about the status of appellant's payments for wage-loss compensation. He also stated that it was impossible for appellant to attend a scheduled medical appointment in Hialeah, Florida. Counsel stated that it was impossible for appellant to attend any medical examination outside of Puerto Rico.

By letter dated September 19, 2013, OWCP informed appellant that it proposed a suspension of his compensation benefits. Appellant was advised that he had 14 days to provide an explanation as to why he failed to appear at his appointment. He was further advised that, if

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<sup>2</sup> Dr. Rojas' office is located in Caguas, Puerto Rico.

<sup>3</sup> Dr. Yates' office is in Hialeah, Florida. OWCP records indicate that OWCP initially tried to locate a neurosurgeon in Puerto Rico before searching in the Miami, Florida area.

he did not show good cause, then his entitlement to compensation would be suspended until after he attends and fully cooperates with the examination.

By decision dated October 18, 2013, OWCP finalized the suspension of appellant's compensation benefits. It noted that appellant's counsel did not offer any specific reason to support appellant's inability to leave Puerto Rico for a medical appointment.

On November 27, 2013 appellant requested reconsideration. Counsel argued that appellant did not have the financial means to fly from Puerto Rico to Florida to attend the examination. He advised that he called OWCP and sent a September 19, 2013 letter explaining the reasons why appellant was unable to attend a medical examination outside of Puerto Rico. Counsel advised that appellant did not want to obstruct or affect the process, but reiterated that he was poor, disabled, and unemployed.

By decision dated February 21, 2014, OWCP affirmed its suspension of appellant's compensation benefits. It found that appellant did not notify his claims examiner or attempt to reschedule his appointment. OWCP also noted that appellant was informed that he could be reimbursed for his travel expenses or, if he had no financial means to purchase a ticket to Florida, that it would have made arrangements for his travel.

In an appeal request form dated March 27, 2014, received by OWCP on September 16, 2014, appellant's counsel requested reconsideration. He argued that appellant lived 1,850 kilometers from Florida and that he did not have the means to buy a plane ticket to Florida. Counsel requested that an appointment be scheduled in Puerto Rico.

By decision dated September 23, 2014, OWCP denied appellant's request for reconsideration without a merit review finding that the evidence presented was not sufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (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.<sup>4</sup> Where the request from reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without opening the case for a review of the merits.<sup>5</sup>

### **ANALYSIS**

In a February 21, 2014 merit decision, OWCP affirmed its decision suspending appellant's compensation under 5 U.S.C. § 8123(d) as appellant did not appear for a scheduled

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<sup>4</sup> *E.K.*, Docket No. 09-1827 (issued April 27, 2010). See 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.606(b).

examination. Appellant submitted a timely request for reconsideration and his counsel asserted that he lived far away from Florida and he did not have the financial means to buy a plane ticket to Florida. On September 23, 2014 OWCP denied the reconsideration request without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. In support of reconsideration, counsel argued that he does not have the financial means to fly to Florida from Puerto Rico. He previously made this argument in support of reconsideration and OWCP fully addressed it in its February 21, 2014 merit decision. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>6</sup> Because this argument has been previously considered, it was insufficient to require OWCP to conduct a merit review. Appellant also did not submit any new evidence nor did he otherwise argue that OWCP erroneously applied or interpreted a specific point of law. Because he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

On appeal, appellant asserts that OWCP's decision was unfair as he did not have the means to purchase an airplane ticket to Florida. He stated that he would go anywhere in Puerto Rico, but reiterated that he did not have the resources to travel to Florida. The Board does not have jurisdiction to review the merits of the case. As explained above, appellant did not submit any evidence or argument in support of his reconsideration request that warranted reopening of his claim for a merit review under section 8128(a).

### **CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>6</sup> *J.P.*, 58 ECAB 289 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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