

FACTUAL HISTORY

This case has previously been before the Board. In an October 27, 2014 decision, the Board found that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after June 4, 2013 caused by the November 15, 2007 employment injury. The Board affirmed an OWCP May 2, 2014 decision.² The findings of facts and conclusions of the previous Board decision are incorporated herein by reference.

On March 11, 2015 appellant, through counsel, requested reconsideration. In a June 3, 2014 treatment note, Dr. John B. Adams, an attending osteopath Board-certified in family and pain medicine, reported appellant's complaint of back pain. He described physical examination findings, noting normal range of motion for age and that appellant walked with a cane. Dr. Adams diagnosed lumbosacral spondylosis without myelopathy, postlaminectomy syndrome of the lumbar region, and chronic pain syndrome. In a January 14, 2015 report, he noted that appellant had a long history of chronic lumbar pain. Dr. Adams referenced a September 3, 2013 report, noting that he reviewed reports of Dr. Carmela G. Osborn, a Board-certified physiatrist, who provided physical restrictions.³ He mentioned a broken ergonomic chair and psychological stress at work. Dr. Adams observed that appellant was not totally disabled and referenced permanent restrictions provided by Dr. Osborne. He related that appellant would most likely have permanent chronic pain issues that could be managed with a combination of conservative care, interventional pain management options, medication, and behavior medicine options such as cognitive behavioral therapy.

By decision dated March 19, 2015, OWCP denied appellant's reconsideration request. It found that the evidence submitted was irrelevant or duplicative of the reports previously of record and was, therefore, insufficient to warrant merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴ Section 10.608(a) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meet at least one of the standards described in section

² Docket No. 14-1494 (issued October 27, 2014). *Id.* OWCP accepted that on November 15, 2007 appellant, a human resources specialist, sustained a hip sprain and displacement of lumbar herniated discs at L4-5 and L5-S1. On December 12, 2007 he underwent a lumbar discectomy and returned to regular duty on September 8, 2008. OWCP accepted an October 29, 2012 recurrence of disability, and paid compensation benefits. Appellant returned to four hours of modified sedentary duty on May 1, 2013. He could sit and stand at will and was not required to lift anything greater than 10 pounds. He continued to receive appropriate compensation for four hours daily. Appellant stopped work on June 4, 2013 and continued to receive compensation for four hours a day. Appellant retired on disability August 8, 2013. On August 13, 2013 OWCP denied appellant's total disability claim finding that the medical evidence did not establish an inability to perform the duties of his modified position. He continued to receive partial disability compensation and medical benefits. By decision dated May 2, 2014, an OWCP hearing representative affirmed the August 13, 2013 decision, finding that the medical evidence did not establish an inability to perform his light-duty job.

³ A copy of a September 3, 2013 report from Dr. Adams is not found in the record before the Board.

⁴ 5 U.S.C. § 8128(a).

10.606(b)(3).⁵ This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.⁶ Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

The only decision before the Board in this appeal is the nonmerit decision of OWCP dated March 19, 2015 denying appellant's application for review.

The merit issue in this case is whether appellant established a recurrence of total disability on June 4, 2013. At that time he was working modified duty for four hours a day and receiving wage-loss compensation for four hours a day.⁸

The Board finds that, as appellant did not assert that OWCP erroneously applied or interpreted the law or advanced a relevant legal argument not previously considered by OWCP, he was not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).⁹

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted reports from Dr. Adams dated June 3, 2014 and January 14, 2015. In the former report, Dr. Adams merely described clinical findings and did not discuss whether appellant could perform modified duties for four hours a day, the merit issue in this case. The June 3, 2014 report is therefore irrelevant. As to the January 14, 2015 report, Dr. Adams referenced a September 3, 2013 report that is not found in the record before the Board. Moreover, while he discussed appellant's ability to work and reported restrictions provided by Dr. Osborne, her restrictions had been reviewed by both OWCP and the Board in its October 27, 2014 decision. Appellant's job duties and restrictions when he stopped work on June 3, 2014 were in accordance with Dr. Osborne's recommendations.¹⁰ Dr. Adams advised that appellant was not totally disabled and had previously discussed the ergonomic chair in June 4 and July 2, 2013 reports, previously reviewed by OWCP and the Board.¹¹ As to his comments about

⁵ 20 C.F.R. § 10.608(a).

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *Supra* note 2.

⁹ 20 C.F.R. § 10.606(b)(3); *see R.M.*, 59 ECAB 690 (2008).

¹⁰ *Supra* note 2. On August 15, 2013 Dr. Osborne advised that appellant had permanent restrictions of no lifting greater than 10 pounds occasionally; no repetitive bending, twisting or stooping; and that he be allowed to change positions sitting to standing every 20 minutes, with rest breaks.

¹¹ *Supra* note 2.

employment-related stress, this is not at issue in this case. Thus, his January 14, 2015 report is duplicative and irrelevant as to whether appellant became totally disabled on June 3, 2014.

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.¹² Likewise, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹³

As appellant did not show that OWCP erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by OWCP, OWCP properly denied his reconsideration request.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2015
Washington, DC

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

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

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

¹² *J.P.*, 58 ECAB 289 (2007).

¹³ *L.H.*, 59 ECAB 253 (2007).