



decision. He argues that OWCP erroneously applied or interpreted many points of law, that he advanced many points of law and facts not previously considered by OWCP, and that he submitted relevant and pertinent new evidence not previously considered by OWCP. Appellant's representative argues that the record is in disarray and that OWCP could not have properly reviewed the reconsideration request. His representative also makes various arguments concerning the merits of the claim.

### **FACTUAL HISTORY**

On September 14, 2005 appellant, then a 27-year-old air traffic controller, filed a traumatic injury claim, Form CA-1, alleging that on September 2, 2005 he suffered internal bruising on his right lower back while at work. In a separate statement dated September 3, 2005, appellant alleged that during a period of very heavy air traffic, his supervisor yelled at him and began angrily and forcibly jabbing him in his right lower back. On February 6, 2006 OWCP accepted appellant's claim for aggravated back strain.<sup>2</sup>

On November 18, 2010 OWCP terminated appellant's compensation and medical benefits effective that date with regard to the injury of September 2, 2005. In the same decision, it denied his claim for a recurrence and denied his claim for an emotional condition due to various incidents at work.

On November 7, 2011 appellant, through his representative, requested reconsideration. Appellant's representative argued, *inter alia*, that the imaging of his documents was incomplete, that OWCP unlawfully withheld documents, that it ignored employment-related factors, and that the well-reasoned medical evidence by appellant's treating physicians substantiate that appellant's physical and emotional conditions were caused by injuries sustained in the performance duty.

In a June 26, 2012 response to a congressional inquiry, OWCP advised that appellant should submit any document that he did not feel was included in the case record. Documents previously submitted were imaged, and a CD of the case record was sent to appellant on May 15, 2012. It noted that appellant had another case, OWCP File No. xxxxxx346, and that the documents in that case were imaged in a separate record.

By decision dated November 29, 2012, OWCP determined that the weight of the medical evidence failed to establish that appellant had any medical condition of the low back, whether it was chronic low back syndrome, peripheral neuropathy, or physical pain injury. In reaching this conclusion, it modified the previous decision in that it found that the previously accepted low

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<sup>2</sup> On August 14, 2006 appellant filed a separate traumatic injury claim for an emotional condition. At his request, by letter dated October 6, 2006, OWCP converted this claim to an occupational disease claim. In a decision dated February 20, 2007, it denied appellant's claim, and in a December 13, 2007 decision, OWCP denied modification of that decision. In a decision dated June 23, 2009, the Board affirmed OWCP's denial of the claim. The Board found that appellant was off-premises at the time of the August 10, 2006 alleged incident. Appellant also attributed his emotional condition to incidents occurring on April 21 and May 5, 2006, but the Board found that these were not compensable factors of federal employment. The Board also noted that to the extent that appellant contended that his emotional condition was related to a September 2, 2005 incident, he may pursue an emotional condition claim under that claim number. Docket No. 08-849 (issued June 23, 2009).

back injury of September 2, 2005 was not established, since appellant's chiropractor never took any x-rays, and therefore his reports lacked probative value under FECA. OWCP further found that the medical evidence did not establish that the event of September 2, 2005 was the proximate cause of appellant's post-traumatic stress disorder (PTSD), stress, anxiety, or depression.

On November 18, 2013 appellant, through his representative, requested reconsideration. In a 1,551 page brief, appellant's representative made a number of arguments, including that OWCP did not consider thousands of pages of documents, contending that they were not stamped by the appropriate received date. He further argued that the medical evidence established appellant's claim, contending that the opinions solicited by OWCP were deficient and improperly obtained, that OWCP asked the physicians inappropriate questions, that his chiropractor's opinion constituted medical evidence under Arizona law, that OWCP did not address all the medical evidence, and that the reports of his physicians established an employment-related emotional and physical disability. The representative contended that appellant sustained an emotional condition as appellant was exposed to prolonged psychological emotional and administrative abuse by the employing establishment.

Appellant's representative also argued in his request for reconsideration that OWCP did not properly develop appellant's claims for recurrence. He further argued that decisions by the Social Security Administration (SSA), the Office of Personnel Management (OPM), and a private insurance company support his claim, that OWCP did not properly follow the Board's prior decision, and that it failed to follow the directives of its prior decision.

Appellant's representative submitted a voluminous number of documents in support of his request for reconsideration, which included the resubmission of medical reports from his chiropractor and relative to his psychiatric condition, copies of collective bargaining agreements, articles concerning the firing of air traffic controllers in the 1980s, and a supervisor's divorce decree.

In a February 28, 2014 decision, OWCP denied appellant's request for reconsideration without reviewing the merits of the case. It determined that the evidence did not support that it erroneously applied or interpreted a specific point of law, nor did the evidence contain relevant legal arguments not previously considered by OWCP. OWCP found that the arguments raised in the request for reconsideration had previously been addressed or were not relevant to the issues under consideration. It also found that no new and relevant evidence had been submitted. OWCP determined that the evidence submitted in support of reconsideration was repetitious and consisted of documents that were previously in the record. OWCP further found that the evidence was also irrelevant or immaterial. It noted that the prior reconsideration decision clearly reviewed and cited the evidence of record and provided a detailed discussion of the merits of the evidence.

## LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>3</sup> its regulations provide that the evidence or argument submitted by 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.<sup>4</sup> To be entitled to a merit review of its decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.<sup>5</sup> 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.<sup>6</sup>

## ANALYSIS

The Board finds that OWCP properly denied further merit review of appellant's claim.

Although appellant, through his representative, contends that he submitted pertinent new and relevant evidence and argument on reconsideration, the Board finds that his submissions do not satisfy this requirement. In support of his reconsideration request, appellant's representative submitted numerous documents including reports from his chiropractor, treatment notes for his emotional condition, correspondence, pay records, and prior decisions, all previously of record. Although appellant contends that the documents constituted pertinent new and relevant evidence, most of the evidence submitted show the original OWCP stamp indicating the date that the document was previously received. As the Board has held, evidence that is repetitive and duplicative of evidence previously of record and reviewed by OWCP is insufficient to warrant further merit review.<sup>7</sup>

The remaining documents have no relevance to the case, including copies of collective bargaining agreements, articles concerning the firing of air traffic controllers in the 1980s, and copies of a supervisor's divorce papers. The submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

Appellant raises issues with regard to his emotional disease claim. However, that case has already been considered by the Board in its June 23, 2009 decision,<sup>9</sup> and appellant cannot

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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." 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608(b).

<sup>7</sup> See *A.L.*, Docket No. 1840 (issued January 20, 2015); *D.K.*, 59 ECAB 141 (2007).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>9</sup> See *supra* note 2.

now relitigate that this emotional condition case by attempting to draw it into the current one. With respect to the findings made by the Board's June 23, 2009 decision those matters are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>10</sup> It has already been determined that appellant did not establish an emotional condition with regard to the incidents adjudicated in OWCP File No. xxxxxx821. OWCP properly refused to reevaluate them when addressing this case involving the September 2, 2005 traumatic injury.<sup>11</sup>

Appellant made arguments with regard to the merits of this case, including the weight given certain items of medical evidence that appellant's chiropractor was to be treated as a physician under FECA, that various alleged incidents caused an emotional condition, that no other event could have caused appellant's medical and physical conditions, and that numerous people made fraudulent statements. These arguments were previously raised before OWCP and are insufficient to warrant merit review.<sup>12</sup>

Appellant's request for reconsideration also makes additional arguments that are not relevant to his claim for a traumatic injury sustained on September 2, 2005. Evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>13</sup>

Finally, appellant contends in his request for reconsideration that decisions by SSA, OPM, and a private insurance company with regard to his disability status are relevant to appellant's claim before OWCP. This is not the case. The Board has long held that decisions made by other federal agencies pursuant to different statutes that have varying standards for establishing disability and eligibility for benefits are not dispositive of FECA proceedings.<sup>14</sup> The Board is likewise not bound by decisions of a private insurance company to grant appellant benefits.

On appeal appellant's representative once again raises the argument that the record below is incomplete. Appellant's representative asks this Board to indicate which record it intends to use in making its decision and to indicate the number of pages in the record. Appellant submitted his own discs to the Board with what he contended was the complete record in his case. However, the Board obtained a copy of the official record from OWCP through imaging. The case record on appeal is the official record of OWCP.<sup>15</sup> This record was made available to appellant. The official record, as presented by OWCP to the Board, constitutes the record in this case.

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<sup>10</sup> *M.H.*, Docket No. 15-0893 (issued July 20, 2015); *see also Robert G. Burns*, 57 ECAB 657 (2006).

<sup>11</sup> The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift. 20 C.F.R. §§ 10.5(ee), 10.5(q).

<sup>12</sup> *See G.G.*, Docket No. 12-1119 (issued March 19, 2013); *W.B.*, Docket No. 11-239 (issued January 27, 2012).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *J.S.*, Docket No. 13-1678 (issued April 3, 2014).

<sup>15</sup> 20 C.F.R. § 501.4(b).

Appellant did not establish that OWCP erroneously interpreted a specific point of law, advance a relevant legal argument not previously considered, or constitute relevant and pertinent new evidence not previously considered by OWCP. As appellant did not meet any of the regulatory requirements of 20 C.F.R. § 10.606(6)(3), the Board finds that OWCP properly declined to reopen his claim for further merit review.<sup>16</sup>

**CONCLUSION**

The Board finds that OWCP properly refused to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 28, 2014 is affirmed.

Issued: September 29, 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

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<sup>16</sup> *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *A.K.*, Docket No. 09-2032 (issued August 3, 2010).