

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

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C.W., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 16-1137</b>
	)	<b>Issued: December 19, 2016</b>
<b>DEPARTMENT OF AGRICULTURE,</b>	)	
<b>AGRICULTURAL MARKETING SERVICE,</b>	)	
<b>Blakely, GA, Employer</b>	)	
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*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 April 4, 2016 appellant filed a timely appeal from a January 15, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

**ISSUE**

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

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

## **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> The facts and circumstances as outlined in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

On March 5, 2014 appellant, then a 50-year-old physical science technician, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome causally related to factors of his federal employment. Following the initial denial by OWCP of his claim on April 10, 2014, an OWCP hearing representative affirmed this decision on January 27, 2015. Appellant appealed to the Board on March 13, 2015.

In a decision dated August 21, 2015, the Board affirmed the January 27, 2015 decision of OWCP's hearing representative, finding that appellant did not meet his burden of proof to establish an occupational disease causally related to factors of his federal employment.<sup>3</sup>

Upon return of the case record to OWCP, appellant resubmitted a July 25, 2014 report by Dr. David Rehak, a Board-certified orthopedic surgeon specializing in hand surgery, wherein he had discussed proposed surgery with appellant, his findings on examination, and the job duties as related by appellant. Dr. Rehak had opined that, if the job duties described by appellant as lifting 50-pound bags, preparing samples, and manually squeezing a pneumatic device were accurate, then these duties could have caused or exacerbated appellant's bilateral carpal tunnel syndrome.

On January 6, 2016 appellant requested reconsideration and indicated that his job description and pictures showed the type of work he did on a daily basis for 40 hours per week. He advised that he spoke with OWCP on December 29, 2015 about sending evidence from his doctor's office.

In a January 15, 2016 decision, OWCP denied appellant's reconsideration request. It explained that he had not provided pertinent, new evidence sufficient to warrant a merit review.

## **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>4</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>5</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

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<sup>2</sup> Docket No. 15-0881(issued August 21, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Supra* note 1. Under section 8128 of FECA, the 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>5</sup> 20 C.F.R. § 10.606(b)(3).

year of the date of that decision.<sup>6</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>7</sup>

### **ANALYSIS**

In a January 27, 2015 merit decision, OWCP denied appellant's claim because the evidence of record did not establish that the diagnosed condition was causally related to factors of his federal employment. Appellant submitted a timely request for reconsideration received by OWCP on January 6, 2016, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration. The underlying issue in this case is whether appellant met his burden of proof to establish that factors of his federal employment caused the diagnosed condition. This is a medical issue. OWCP's prior decisions and the Board's prior decision that the medical evidence was insufficient to establish his claim. In support of his reconsideration request, appellant resubmitted a July 25, 2014 report from Dr. Rehak, but this report does not constitute relevant and pertinent new evidence. The Board has held that 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>8</sup>

Furthermore, appellant's reconsideration request neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Because he failed to meet one of the criteria enumerated under 20 C.F.R. § 10.606(b)(3), appellant was not entitled to further merit review of his claim.

### **CONCLUSION**

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

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<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *J.P.*, 58 ECAB 289 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2016  
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