



February 7, 2010 he “passed out and hit [his] head on equipment.” He claimed head trauma. The claim form indicated that appellant’s incident occurred during his regular tour of duty at his duty station. On the reverse of the form, appellant’s supervisor stated that the medical documentation did not support a work-related injury as appellant had two other claims for the same type of incident. Appellant submitted a report dated February 9, 2010 from Dr. Michael Baker, a Board-certified neurologist, indicating that appellant had passed out due to syncope or dehydration.

In a letter dated February 24, 2010, OWCP requested additional factual and medical information from appellant including what he believed to be the cause of his fall, whether he struck an object during his fall and whether there were any witnesses to his fall.

Appellant responded that he did not have a clear recollection of the duties that he was performing at the time of his black out. He remembered spreading mail. Appellant noted, “Everyone at work says I get in a confused state minutes before I pass out and start staring at things and acting like I’m lost or something.” He further noted that he never remembered what happened right before or after he blacked out. Appellant stated that this was the third time in a year that he passed out. He stated that his doctors attributed his faints to standing on his feet for long periods at work and becoming overheated. Appellant noted that he had borderline high blood pressure and had been taking medication for this condition for three years. He claimed that the “rumor” was that he hit a pull down rack during his faint, but that there was only one witness and he requested that OWCP obtain a statement from his employing establishment.

Appellant submitted a computerized tomography (CT) scan dated February 8, 2010 which reflected no acute intracranial abnormalities.

By decision dated April 2, 2010, OWCP denied appellant’s claim. It found that he had not submitted medical evidence establishing a causal relationship between his employment and his alleged injury. Appellant requested a review of the written record from OWCP’s Branch of Hearings and Review on April 27, 2010.

In a report dated March 24, 2010, Dr. Harsh Singh, a Board-certified neurologist, noted that appellant had passed out three times in the last year and had a history of headaches. He provided his findings on physical examination and stated, “At this point, appellant’s events are unclear and they do not appear to be epileptic in nature.”

Appellant submitted additional medical evidence including a note dated April 28, 2010 from Dr. Jonathan Constantin, an osteopath, indicating that appellant had another episode of vasovagal syncope at work and referring to his October 28, 2009 report. In a report dated October 28, 2009, Dr. Constantin stated that appellant experienced “fairly classical vasovagal syncope which was likely related to prolonged standing.” He recommended that appellant avoid prolonged standing.

On February 8, 2010 Chris Dryden, a coworker, stated that appellant collapsed on the floor on that date. He noted that appellant had a very large knot on the back of head. Brandon Gamadge, a coworker, reported appellant’s fall. Mr. Dryden then drove appellant home. He noted that appellant had a large lump on the back of his head.

In a decision dated August 5, 2010, the hearing representative affirmed OWCP's April 2, 2010 decision.

Upon reconsideration appellant submitted a report from Dr. Gerard M. Gerling, a Board-certified neurologist. Dr. Gerling examined appellant on September 13, 2010 diagnosing carpal tunnel syndrome and migraine headaches. He noted that appellant had lost consciousness four times in the past year and diagnosed vasovagal syncope. Dr. Gerling found that appellant had a normal neurological examination and reviewed the medical evidence. He noted that appellant's treating physician diagnosed vasovagal syncope related to overheating and standing for too long at work. Dr. Gerling disagreed with this assessment. He stated, "There is insufficient evidence provided to indicate what [appellant's] condition is, but there is no evidence provided that indicates that he suffered a work-related injury." Dr. Gerling noted that vasovagal syncope was medically considered as a functional disorder rather than an organic illness.

By decision dated October 18, 2010, OWCP denied appellant's claim finding that the evidence was not sufficient to establish a traumatic injury in the performance of duty on February 7, 2010. It stated that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event.

Appellant informed OWCP on October 27, 2010 that his teeth were dislodged during the fall. Appellant, through counsel, requested a telephone hearing on October 29, 2010. He testified at the oral hearing on March 21, 2011. Appellant testified that he was working outside in 100-degree weather and as he was leaving work he walked by a concrete picnic table and fainted. He alleged that he hit a concrete door and that his supervisors found him lying in a pool of blood with his teeth knocked out.

In a note dated August 11, 2010, Dr. Constantin stated that appellant sustained a traumatic syncopal event while working outside in 104-degree weather. He noted that appellant had a syncopal episode in which he lost several teeth and struck his head which he was hospitalized and released. Dr. Constantin stated, "This is a 38-year-old with fairly classic vasovagal syncope and it seems to be clearly exacerbated by prolonged standing at work. [Appellant's] last episode was his most dramatic and traumatic and occurred in 104 degrees temperature with profuse sweating."

By decision dated June 28, 2011, the OWCP hearing representative reviewed the medical evidence and noted variances between appellant's description of the employment events. He concluded that appellant had blacked out and fallen at work on February 7, 2010, but that the medical evidence was not sufficient to establish that appellant's work affected an underlying medical condition on February 7, 2010.

Appellant appealed to the Board. In a September 5, 2012 decision,<sup>2</sup> the Board found that as an unexplained fall occurred while appellant was engaged in activities incidental to his employment duties, an injury resulting from the February 7, 2010 fall was compensable. The Board found that OWCP properly accepted that he had an unexplained fall on February 7, 2010. The Board further found that OWCP properly concluded that appellant had failed to establish

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<sup>2</sup> Docket No. 11-1826 (issued September 5, 2012).

any medical condition for which compensation is claimed as a result of the February 7, 2010 employment incident.

On July 25, 2013 appellant requested reconsideration. In support of his request he submitted a report dated May 15, 2013 from Dr. Milton Peavey, a dentist. Dr. Peavey asserted that he first examined appellant on August 3, 2010 when appellant reported that he had been in an accident at the employing establishment. He noted that he removed a broken tooth and provided appellant with a dental bridge. Dr. Peavey opined that although he had not previously examined appellant, the injuries were due to his recent fall.

By decision dated August 7, 2013, OWCP denied modification of its prior decisions noting that the evidence regarding appellant's February 7, 2010 fall did not support that he sustained an injury to his teeth or mouth. Appellant appealed to the Board. By decision dated March 6, 2014,<sup>3</sup> the Board found that he had not established that his February 7, 2010 fall occurred outside, that he struck a picnic table, or that he sustained injuries to his mouth or teeth. The Board further found that Dr. Peavey's report was not sufficiently detailed to establish that appellant sustained dental injuries from his February 7, 2010 employment incident.

On March 19, 2014 counsel again requested reconsideration. He argued that appellant was not claiming a traumatic injury, but an occupational disease, chronic vasovagal syncope, caused by exposure to high temperatures, or by standing at work for long periods. Counsel asserted that appellant experienced syncope on October 28, 2009 and February 7 and August 3, 2010. He further alleged that appellant sustained dental injuries and a concussion on August 3, 2010 not February 7, 2010. Counsel attributed appellant's syncope to standing for up to 10 hours a day and working in temperatures of up to 104 degrees.

By decision dated April 4, 2014, OWCP declined to reopen appellant's claim for consideration of the merits. Appellant appealed to the Board. The Board reviewed this decision on October 15, 2014<sup>4</sup> and found that OWCP properly declined to reopen his claim for consideration of the merits. The Board determined that the arguments presented were not new and that it had previously found that appellant had not established a claim for vasovagal syncope.

By, letter dated October 22, 2014, counsel again requested reconsideration, received on November 4, 2014. He submitted a series of reports from Dr. Constantine. On October 21, 2009 Dr. Constantine reported that appellant had experienced two episodes of syncope in the previous five months. He noted that appellant's position required prolonged standing working shifts of 8 to 10 hours. Dr. Constantine related that appellant first experienced syncope at the end of a 10-hour shift and that his second episode also occurred at the end of a long shift. He opined that appellant's history was fairly classic for vasovagal syncope.

Counsel also resubmitted Dr. Constantine's October 28, 2009 report and his August 11, 2010 note. Dr. Constantine completed a treatment note dated October 28, 2009 opining that appellant experienced "a fairly classic vasovagal syncope episode after prolonged standing." He

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<sup>3</sup> Docket No. 13-2118 (issued March 6, 2014).

<sup>4</sup> Docket No. 14-1213 (issued October 15, 2014).

noted that appellant worked 8 to 10 hours a day standing mostly in one position without a lot of movement. Dr. Constantine concluded that appellant's syncope was "clearly work related." He recommended that appellant avoid prolonged standing and stay well hydrated. In a treatment report dated April 28, 2010, Dr. Constantine advised that appellant experienced syncope after standing for six hours. He encouraged appellant to consider a change of employment or change of position in which prolonged standing was not required.

By decision dated April 27, 2015, OWCP declined to reopen appellant's claim for consideration of the merits. It found that as Dr. Constantine's reports predated his claimed date of injury, the reports were irrelevant.

### **LEGAL PRECEDENT**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>5</sup> Section 10.606(b)(3) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup> Section 10.608 of OWCP regulations provide that when a request for reconsideration is timely, but does not meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>7</sup> Section 10.607(a) of OWCP regulations provide that to be considered timely an application for reconsideration must be received by OWCP within one year of the date of OWCP's merit decision for which review is sought.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

Appellant, through counsel, filed a timely request for reconsideration. In support of this request, he submitted a series of documents from Dr. Constantine dated October 21, 2009 through April 28, 2010. Two of these documents were duplicative of evidence previously reviewed by OWCP, the April 28, 2010 note and the October 28, 2009 report. As these reports

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<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3).

<sup>7</sup> *Id.* at § 10.608.

<sup>8</sup> *Id.* at § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

are not new evidence, they are not sufficient to require OWCP to reopen appellant's claim for consideration of the merits.<sup>9</sup>

In regard to the October 21 and 28, 2009 notes, while not previously of record, are cumulative, and repetitive. Dr. Constantine repeats his opinion that appellant's diagnosis is vasovagal syncope due to prolonged standing.<sup>10</sup> These reports do not constitute relevant and pertinent new evidence and are not sufficient to require OWCP to reopen his claim for consideration of the merits.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *James W. Scott*, 55 ECAB 606 (2004) (evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case).

<sup>10</sup> *See id.*; *J.S.*, Docket No. 15-623 (issued November 25, 2015).