



## **FACTUAL HISTORY**

On August 17, 2014 appellant, then 36-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that he experienced mental trauma due to a loss of separation on that date. He stopped work on the date of injury.

In an August 29, 2014 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In an undated statement, appellant related that on August 17, 2014 he was sitting at his radar scope working Newark arrival aircraft. He had several aircraft on his frequency and under his control while also experiencing problems with his equipment. Appellant became distracted by the equipment problems and coordination that was taking place behind him. He did not notice that two aircraft under his control were getting too close to each other. When a conflict alert activated, appellant realized that separation was lost between both aircraft. He immediately reestablished standard separation while continuing to work several other aircraft on his frequency. Appellant stated that this incident left him feeling very anxious, stressed, and mentally unable to properly perform his air traffic controller duties.

In an August 18, 2014 duty status report (Form CA-17), Dr. Bruce S. Herman, Ph.D., an attending clinical psychologist, noted August 17, 2014 as the date of injury and a history of injury that appellant had a loss of separation. He diagnosed unspecified acute reaction to stress due to the injury. Dr. Herman advised that appellant was unable to perform his regular work duties.

In a September 30, 2014 decision, OWCP accepted that the August 17, 2014 incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record did not contain a rationalized medical opinion to establish a causal relationship between his emotional condition and the accepted employment incident.

Subsequently, OWCP received an authorization for examination and/or treatment (Form CA-16) that was signed and issued by the employing establishment on August 17, 2014.

On January 14, 2015 appellant requested reconsideration.

In an August 18, 2014 narrative report and September 29, 2014 attending physician's report, Dr. Herman noted a history of the August 17, 2014 employment incident, provided examination findings, reiterated his diagnosis of unspecified acute reaction to stress, and addressed appellant's work capacity. In the August 18, 2014 report, he noted that appellant attributed his emotional condition, difficulty with sleeping, and inability to work to the accepted work incident. In the September 29, 2014 form report, Dr. Herman indicated with an affirmative mark that his diagnosis was caused or aggravated by the August 17, 2014 employment incident. He concluded that appellant could return to his regular work.

By decision dated March 30, 2015, OWCP denied modification of the September 30, 2014 decision. It found that the medical evidence submitted did not contain a rationalized medical opinion to establish a causal relationship between appellant's emotional condition and the accepted August 17, 2014 work incident.

In an August 15, 2015 letter and August 23, 2015 appeal request form, received on August 27, 2015 appellant requested reconsideration of the March 30, 2015 decision. In his August 15, 2015 letter, he contended that Dr. Herman's August 18 and September 29, 2014 reports established a causal relationship between his emotional condition and the accepted August 17, 2014 work incident.

Appellant resubmitted the second page of Dr. Herman's August 18, 2014 report.

In a September 29, 2015 decision, OWCP denied further merit review of appellant's claim. It found that he had not submitted a relevant legal argument and that the medical evidence submitted was duplicative and previously considered.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulation provide that 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>3</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> Section 10.608(b) of the implementing regulations states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.<sup>5</sup>

### **ANALYSIS**

Appellant disagreed with OWCP's denial of his traumatic injury claim. He requested reconsideration and asserted that his emotional condition was causally related to the accepted August 17, 2014 employment-related incident. The underlying issue in this case is whether appellant submitted medical evidence establishing that his emotional condition is causally related to the accepted August 17, 2014 work incident. That is a medical issue which must be addressed by relevant, new medical evidence.<sup>6</sup>

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant did not advance a relevant legal argument not previously considered or submit relevant an pertinent new evidence not previously considered by OWCP. In his August 15, 2015 request for reconsideration and on appeal

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<sup>2</sup> *Id.* 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>3</sup> 20 C.F.R. § 10.606(b)(3).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>6</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

appellant asserted that Dr. Herman's August 18 and September 29, 2014 reports were sufficient to establish the causal relationship between his emotional condition and the accepted work incident. The Board finds that appellant's assertion does not constitute medical evidence as he is a lay person and is not competent to render a medical opinion.<sup>7</sup>

Appellant also resubmitted page two of Dr. Herman's August 18, 2014 report. This report was previously of record. The Board has held that evidence which repeats or duplicates evidence already in the case record, however, has no evidentiary value and does not constitute a basis for reopening a case.<sup>8</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

The Board notes that the employing establishment executed a Form CA-16 on August 17, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>9</sup> Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. The Board finds that, upon return of the case record, this matter should be addressed.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>7</sup> *James A. Long*, 40 ECAB 538, 542 (1989).

<sup>8</sup> *See J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

<sup>9</sup> *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300 and 10.304.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2016  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board