



Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of the claim.

### **ISSUE**

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

### **FACTUAL HISTORY**

On January 27, 2012 appellant, then a 58-year-old accounting technician, filed an occupational disease claim (Form CA-2) alleging that prolonged sitting aggravated preexisting accepted conditions that OWCP had developed under claim number xxxxxx345.<sup>4</sup> He claimed that work activities aggravated his lumbar spondylosis and osteoarthritis, cup arthroplasty, right and left hip arthritis, and disc displacement. Appellant became aware of his condition on January 23, 2012.

In a February 19, 2012 report, Dr. Eric Aitken, a Board-certified physiatrist, provided a history of appellant's treatment. He advised that appellant underwent an arthroplasty in the 1980's that resulted in a shortened lower extremity and in 2003 he began experiencing symptoms with no clear inciting event. Dr. Aitken noted that appellant had significant pain with internal and external rotation of the right hip. He contended that, due to significant limitation in appellant's mobility and his inability to sit for prolonged periods, he was unable to work in any capacity. Dr. Aitken noted that appellant was scheduled for a total hip arthroplasty, but it was postponed due to his weight.

Appellant submitted a statement summarizing a conference with his orthopedic surgeon on February 22, 2012 in which the surgeon noted that an x-ray of the right hip, for which appellant had surgery in July 1984, showed bone growth that restricted the rotation of the right leg and shortening of that leg. He indicated that he was contemplating further surgery, but the surgeon was reluctant to operate due to appellant's weight.

In a March 21, 2012 statement, appellant attributed his condition to prolonged sitting and continuous pressure on his hip over time. He noted that in 2007 he was moved to a sitting job due to aggravation of his preexisting conditions. Appellant indicated that he used a power chair during his tour of duty and took occasional breaks from sitting.

In a decision dated May 10, 2012, OWCP denied appellant's claim because evidence of record was insufficient to establish causal relationship between the accepted factors of his federal employment and his medical conditions.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Claim number xxxxxx345 is not before the Board on the present appeal. OWCP developed the present matter under claim number xxxxxx098.

In a March 28, 2013 report, Dr. Aitken noted that appellant underwent a total hip arthroplasty which provided some improvement in pain. He opined that the “settling of [his] right hip may in part be contributed by his work and may in part have been a result of the sedentary position that he was maintaining.” Dr. Aitken further opined that his increasing right hip pain was attributable to his previous work-related injuries explaining that it increased weight bearing to the right lower extremity which led to degeneration of his previous partial hip surgery. He concluded that there was a causal relationship between appellant’s previous injury and his most recent pain and issues related to the right hip.

Appellant requested reconsideration on April 9, 2013.

By decision dated April 17, 2013, OWCP denied modification of its prior decision. It noted that appellant’s claim under number xxxxxx345 had been accepted for aggravation of his preexisting back, and left and right hip conditions resulting from factors of his federal employment. However, after reviewing Dr. Aitken’s report, OWCP concluded that his opinion was speculative as it remained unclear as to how appellant’s sedentary work duties further worsened or aggravated his preexisting conditions “that were already worsened by your prior work duties” under claim number xxxxxx345.

On November 5, 2013 appellant requested reconsideration.

In a September 12, 2013 report, Dr. Aitken advised that he had treated appellant since 2008. He noted that appellant related a history of symptoms since 2003 without any clear inciting events. Dr. Aitken reported appellant’s work history with the employing establishment and listed examination findings. He noted that he saw appellant in February 2012 with complaints of increasing right hip pain that occurred with prolonged sitting at work. X-rays showed the previous conservative hip arthroplasty with the femoral head resurfacing on the right with settling of the femoral head and neck within the resurfaced area. Dr. Aitken indicated that appellant was referred to a surgeon and underwent a right total hip arthroplasty which provided improvement in his symptoms.<sup>5</sup> He opined that appellant’s sedentary position at work resulted in a settling of the femoral head and the neck within the resurfaced area and necessitated the total hip arthroplasty at that time.

On November 22, 2013 OWCP prepared a statement of accepted facts (SOAF). It addressed claims under xxxxxx345, xxxxxx729, and xxxxxx098. OWCP noted that appellant’s claim under xxxxxx345 was accepted for aggravations of lumbar spondylosis, herniated disc, right hip arthroplasty, and left hip degenerative joint disease.<sup>6</sup> Appellant received a schedule award for six percent permanent impairment of the left leg and 15 percent permanent impairment of the right leg due to the accepted conditions under claim number xxxxxx345. OWCP stated that he had a total right hip replacement in September 2012. It sent the SOAF to Dr. Aitken on November 22, 2013 and requested that he address how any diagnosed conditions were caused or aggravated by appellant’s occupational exposures in January 2012. Dr. Aitken did not respond.

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<sup>5</sup> No operative report appears in the record before the Board.

<sup>6</sup> No conditions were accepted under claim number xxxxxx729.

By decision dated January 10, 2014, OWCP denied modification of its prior decision. OWCP found that Dr. Aitken did not explain in his September 12, 2013 report how appellant's "sedentary occupational exposure during January 2012 directly caused a new medical condition or aggravated or caused a material worsening to a preexisting medical condition." OWCP noted that the doctor did not respond to its request for a supplemental medical opinion to explain causation or aggravation.

In a January 7, 2015 letter, received by OWCP on January 12, 2015, appellant, through counsel, requested reconsideration. Counsel contended that there was no reason to file a new claim or a recurrence claim as his current condition was a natural progression of the conditions accepted by OWCP under claim number xxxxxx345. She noted that her firm was retained to determine if an increased schedule award was warranted under claim number xxxxxx345 due to appellant's increased impairment. Counsel concluded that there was no reason to file a recurrence claim, nor a claim for a new injury under the current file number. She requested that the current claim be combined with the original claim number, xxxxxx345, and that OWCP consider appellant's entitlement to further compensation based on the natural progression of the employment condition accepted under claim number xxxxxx345.

By decision dated March 30, 2015, OWCP denied appellant's request for reconsideration without a merit review.

On appeal before the Board counsel argues that appellant had preexisting displacement of a lumbar intervertebral disc without myelopathy, lumbosacral spondylosis without myelopathy, right unspecified arthroplasty of the pelvic region and thigh, and left localized primary osteoarthritis of the pelvic region and thigh accepted under claim number xxxxxx345. She notes that his claims examiner denied authorization for a hip replacement and informed him that he needed to file a recurrence claim. Counsel asserts that both appellant and his doctor believed the surgery was causally related to his accepted conditions, and that his need for a hip replacement was not a medical recurrence as there was no breakage in the chain of causation, release from treatment, spontaneous change in condition, change in a light-duty assignment, or withdrawal of an accommodation. Counsel contended that "the entire matter" should be "rebundled back to the original claim number" xxxxxx345.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>7</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>8</sup>

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<sup>7</sup> 5 U.S.C. § 8101 *et seq.* 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>8</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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>9</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.<sup>10</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>11</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>12</sup>

### ANALYSIS

The most recent decision reviewing the merits of appellant's case was OWCP's January 10, 2014 decision which found that the medical evidence was insufficient to establish that appellant's work duties caused or aggravated his claimed conditions. In support of his reconsideration request, appellant has neither shown that OWCP erroneously applied or interpreted a specific point of law, nor has he submitted relevant and pertinent new evidence. Instead, counsel alleged that appellant's current condition is a natural progression of his conditions that have been accepted under claim number xxxxxx345, and thus, is not a new injury. She asserts that, in order to properly determine whether appellant has established that compensation benefits are warranted based on the natural progression of the employment condition accepted under claim number xxxxxx345, OWCP should combine claim number xxxxxx345 with the current claim, number xxxxxx098 to resolve the issue.

The Board finds that appellant's reconsideration request fails to advance a relevant legal argument not previously considered by OWCP. In its April 17, 2013 and January 10, 2014 merit decisions, OWCP had determined that the medical evidence of record, as represented by Dr. Aitken, did not sufficiently explain how and why appellant's work duties either caused or aggravated his accepted conditions. On reconsideration, counsel raises the same argument as appellant had before he retained counsel. As this argument was previously advanced and reviewed by OWCP, the Board finds that it is insufficient to warrant reopening the case for further consideration of the merits. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>13</sup> The Board finds that, as appellant has not met any of

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<sup>9</sup> 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>10</sup> *Id.* at § 10.607(a).

<sup>11</sup> *Id.* at § 10.608(b).

<sup>12</sup> *See Eugene F. Butler*, 36 ECAB 393, 398 (1984); *see also V.R.*, Docket No. 16-0969 (issued August 8, 2016).

<sup>13</sup> *Id.*

the criteria for further consideration of the merits of his claim, OWCP properly denied his request for reconsideration.<sup>14</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's January 12, 2015 reconsideration request under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2016  
Washington, DC

Christopher J. Godfrey, 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>14</sup> Should appellant wish to pursue an increased schedule award in claim number xxxxxx345, the Board notes that he may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.