United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 17-0022**
	)	**Issued: May 2, 2017**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL CENTER, Victorville, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 6, 2016 appellant filed a timely appeal from a September 8, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed since the last merit decision dated November 5, 2015 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3 the Board lacks jurisdiction over the merits of this case.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 24, 2007 appellant, then a 43-year-old warden, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2007, while deploying munitions, he struck a pin object with his right hand. He also noted that in attempting to restrain a combative inmate, he further injured his right hand. Appellant noted that the soreness in his right hand radiated to his right wrist. On November 9, 2007 OWCP accepted his claim for right wrist sprain and closed fracture right carpal bone. It subsequently accepted appellant's claim for bilateral carpal tunnel syndrome, other synovitis, and bilateral tenosynovitis of the hand and wrist. OWCP also later accepted his claim for bilateral carpal tunnel syndrome on December 17, 2009 in OWCP File No. xxxxxx673. It paid appellant compensation on the supplemental rolls beginning March 9, 2010, and on the periodic rolls beginning November 21, 2010.

On October 21, 2010 appellant underwent a right carpal tunnel release of the median nerve with decompressive neurolysis of the right wrist, flexor tenosynovectomy of the right wrist, and ulnar nerve decompression of the right wrist with distal forearm fascial release. On January 11, 2011 he underwent the same surgery on his left upper extremity.

By letter dated July 28, 2015, OWCP noted that the claim in OWCP File No. xxxxxx673 was open for medical treatment only, and doubled that claim with the present case.

On August 12, 2015 OWCP referred appellant to Dr. Ronald Teed, a Board-certified orthopedic surgeon, for a second opinion to determine appellant's disability status. In a September 9, 2015 report, Dr. Teed listed appellant's diagnoses as right wrist sprain, resolved, accepted; closed fracture of carpal bone, right, healed, accepted; bilateral carpal tunnel syndrome, resolved, accepted; tenosynovitis and synovitis, bilateral, resolved, accepted; tenosynovitis of hand and wrist, bilateral, resolved, accepted; lumbar spine and chronic lower back pain, unrelated; cerebrovascular accident, unrelated; spondylosis of the lumbar spine, chronic disability; and functional overlay unrelated. He also related that appellant was receiving VA disability benefits secondary to a 1986 helicopter accident. Dr. Teed noted that appellant was eight years out from an on-the-job injury of April 16, 2007, and that the accepted conditions had resolved. He stated that appellant's complaints were supported only by subjective findings and that there were no objective findings to support his complaints. Dr. Teed indicated that the etiology of appellant's current subjective complaints were unknown, inorganic, and did not follow a classic presentation. He indicated that appellant was capable of performing his employment duties.

On September 30, 2015 OWCP proposed terminating appellant's wage-loss compensation and medical benefits as appellant no longer had any residuals from the accepted April 16, 2007 or December 17, 2009 work injuries. In a letter dated October 22, 2015, appellant alleged that Dr. Teed had not conducted a full examination and only spent two minutes in the examining room with him. He also alleged that Dr. Teed failed to obtain additional diagnostic tests. By decision dated November 5, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits.

On June 14, 2016 appellant requested reconsideration. In support of his reconsideration request, appellant argued that the second opinion physician, Dr. Teed did not perform an

electromyogram or nerve conduction velocity study and spent only 1 minute and 23 seconds in the office with him.

Appellant also resubmitted a June 10, 2013 report from Dr. Rama T. Pathi, an orthopedic hand surgeon, which provided a permanent impairment evaluation.

In a January 23, 2015 progress note, Dr. Sally L. Niles, a Board-certified physiatrist, found right carpal tunnel syndrome, mild, which may be consistent with residual changes after successful carpal tunnel surgery, bilateral ulnar entrapment at elbow, mild; no electrodiagnostic evidence for peripheral polyneuropathy in the upper extremities, no electromyogram evidence for cervical radiculopathy right side, and no electromyogram/nerve conduction velocity evidence of carpal tunnel syndrome, left. She issued bilateral ulnar flotation splints and educational material. Appellant also resubmitted a June 10, 2013 report from Dr. Pathi.

By decision dated September 8, 2016, OWCP denied appellant's request for reconsideration of the merits of the case.

LEGAL PRECEDENT

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[2] To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's 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.[3] 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.[4]

ANALYSIS

The Board has reviewed the case record and finds that OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

OWCP accepted appellant's claim for right wrist sprain, closed fracture right carpal bone, bilateral carpal tunnel syndrome, bilateral tenosynovitis of the hand and wrist, and bilateral carpal tunnel syndrome. In the last merit decision, issued on November 5, 2015, OWCP terminated appellant's medical and wage-loss compensation, effective November 3, 2015, as appellant no longer had residuals or continuing disability related to his accepted conditions.

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

[2] *Id*. at § 8128(a).

[3] 20 C.F.R. § 10.606(b)(3).

[4] *Id.* at § 10.608(b).

argument not previously considered. He alleged that Dr. Teed, the second opinion physician, had not conducted a proper examination, only spent a few minutes with him, and did not order further diagnostic tests. This argument was previously raised by appellant prior to the November 5, 2015 decision which terminated his compensation benefits. 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.[5] Consequently, appellant was not entitled to a review of the merits of the claim based on the first and second above-noted requirements under section 10.606(b).[6]

In support of his reconsideration request, appellant submitted a June 10, 2013 report by Dr. Pahi that was already in the record. Evidence that is duplicative, cumulative, or repetitive in nature is insufficient to warrant reopening a claim for merit review.[7]

Appellant also submitted a new January 23, 2015 progress note, wherein Dr. Niles found right carpal tunnel syndrome, mild, which he believed could be consistent with residual changes after successful carpal tunnel surgery, bilateral ulnar entrapment at elbow, mild, no electrodiagnostic evidence for peripheral polyneuropathy in the upper extremities, no electromyogram evidence for cervical radiculopathy right side, and no electromyogram/nerve conduction velocity evidence of carpal tunnel syndrome, left. Dr. Niles gave appellant bilateral ulnar flotation splints and educational material.

The underlying issue in this case was the termination of appellant's wage-loss compensation and medical benefits. OWCP properly determined that this new progress note from Dr. Niles did not address whether appellant remained disabled as a result of his accepted injury. Therefore this progress note was not relevant to the underlying issue of appellant's entitlement to continuing wage-loss benefits. The Board also finds that this progress note did not address any need for continuing medical treatment.

Furthermore, while Dr. Niles related that appellant had bilateral ulnar entrapment at the elbow and that he had been given bilateral ulnar flotation splints, the Board notes that bilateral ulnar entrapment was not an accepted condition in this case. Evidence which does not address the issue before OWCP does not constitute relevant and pertinent new evidence and is insufficient to require OWCP to reopen the claim for consideration of the merits.[8] The progress note from Dr. Niles therefore does not constitute new and relevant pertinent evidence to support a finding that appellant required further medical treatment for the accepted conditions in this case.

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

[5] *G.H.*, Docket No. 17-0030 (issued February 14, 2017).

[6] *See E.Z.*, Docket No. 16-1744 (issued February 16, 2017).

[7] *Denis M. Dupor*, 51 ECAB 482 (2000).

[8] *J.D.*, Docket No. 16-1253 (issued February 7, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2016 is affirmed.

Issued: May 2, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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