

stress, anxiety, and mental trauma due to observing a loss of separation between two aircraft. He stopped work on May 9, 2015.²

In a May 14, 2015 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported May 9, 2015 incident at work caused or aggravated a medical condition. It requested that he complete and return an attached questionnaire which posed various questions relative to the May 9, 2015 incident at work. On May 14, 2015 OWCP also requested additional information from the employing establishment.

In a May 15, 2015 statement, appellant responded to OWCP's May 14, 2015 request for additional evidence. He recounted that on May 9, 2015 he was handling aircraft traffic while at the same time training a new trainee in his workplace. Appellant indicated that a corporate jet departing from Teterboro Airport in New Jersey checked in and the trainee directed it to climb to 6,000 feet. When the corporate jet had climbed to 2,000 feet, he noticed that another aircraft which departed from LaGuardia Airport in Queens, New York, was using the same airspace.³ Appellant then instructed the pilot of the corporate jet to immediately ascend to 3,000 feet in order to avoid the aircraft which departed from LaGuardia Airport. He indicated that he yelled at his supervisor to find out why the aircraft which departed from LaGuardia Airport was in the same airspace as the corporate jet and he stopped all subsequent aircraft departures. Appellant asked a coworker to relieve him of his duties and he gave a briefing of the incident after the coworker relieved him. While he was on break, appellant's body began to shake and his heart started to race. He indicated that, during the remainder of his shift on May 9, 2015 and the following days, he thought about the possibility that the two aircraft could have hit each other and about the responsibility he had for the safety of the passengers on the aircraft. Appellant reported experiencing reactions to the May 9, 2015 incident, including flashbacks, sleep problems, and nervousness.

Appellant submitted an authorization for examination and/or treatment form (Form CA-16) completed on June 18, 2015 by Dr. Bruce S. Herman, an attending clinical psychologist. Dr. Herman listed the nature of the injury as loss of separation of two aircraft, diagnosed unspecified acute reaction to stress, and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by the described employment factor.

By decision dated June 22, 2015, OWCP denied appellant's claim that he sustained a stress-related condition due to the described May 9, 2015 incident at work. It determined that an employment incident occurred on May 9, 2015 in the form of a loss of separation of two aircraft, but found that appellant's claim was denied because he failed to establish the medical component of the fact of injury.⁴

² On the reverse side of the Form CA-1, appellant's immediate supervisor indicated that appellant was in the performance of duty at the time of the May 9, 2015 incident, but noted that the incident was still under investigation.

³ Appellant asserted that his supervisor did not inform him or the trainee that the aircraft departing from LaGuardia Airport would be using this airspace.

⁴ OWCP maintained that it had not received any medical evidence despite the fact the June 18, 2015 report of Dr. Herman was of record.

On July 22, 2015 appellant requested reconsideration of the June 22, 2015 decision.

Appellant submitted a May 12, 2015 report in which Dr. Herman described his psychological evaluation on that date. Dr. Herman detailed appellant's description of the May 9, 2015 incident which was similar to the statement appellant submitted in connection with his traumatic injury claim.⁵ He described the psychological testing he administered to appellant during the office visit, noting that the testing revealed various symptoms experienced by appellant since May 9, 2015 including anxiety, intrusive thoughts, and flashbacks to the May 9, 2015 incident. Dr. Herman indicated that appellant felt he could not presently return to work as he needed time to recover from the effects of the May 9, 2015 incident and he advised that appellant would be seen in psychotherapeutic sessions to help him recover from the trauma. He diagnosed acute nonspecific reaction to stress.

In a June 18, 2015 duty status report (Form CA-17), Dr. Herman diagnosed unspecified acute reaction to stress (resolved) and indicated that appellant could return to his regular work on a full-time basis.⁶

By decision dated October 20, 2015, OWCP modified its June 22, 2015 decision to reflect that appellant's claim for a May 9, 2015 injury was denied because he failed to submit sufficient medical evidence to establish a diagnosed medical condition causally related to the accepted May 9, 2015 employment incident. It found that Dr. Herman failed to provide a well-reasoned medical explanation, with supporting objective findings, detailing how the May 9, 2015 incident was causally related to the diagnosed stress reaction condition.

On March 17, 2016 appellant requested reconsideration of the October 10, 2015 decision. In a February 22, 2016 statement accompanying his reconsideration request, appellant further discussed the circumstances of the May 9, 2015 employment incident. He argued that Dr. Herman provided a well-reasoned medical explanation, with supporting objective findings, detailing how the May 9, 2015 incident was causally related to the diagnosed stress reaction condition.

By decision dated June 14, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence/argument appellant submitted in support of his reconsideration request was irrelevant to the main issue of the case, *i.e.*, the causal relationship between the May 9, 2015 employment incident and a diagnosed medical condition.

On September 29, 2016 appellant requested reconsideration of OWCP's October 10, 2015 decision. In a September 13, 2016 letter accompanying his reconsideration request, appellant indicated that he lived a relatively stress-free life outside of work, that he had a wonderful family, and that he enjoyed spending time doing normal everyday activities. He asserted that this all changed after the May 9, 2015 employment incident and that it took several weeks for him to be able to return to his normal everyday routine. Appellant noted, "All of this

⁵ Appellant reported that the two aircraft came within 200 feet of vertical separation from each other and within 1.6 miles of lateral separation.

⁶ It is unclear from the record whether appellant returned to work for the employing establishment around this time period. Appellant also resubmitted a copy of the June 18, 2015 Form CA-16 of Dr. Herman.

has been documented through my physician and tests were administered that determined that my reactions and actions were all attributable to what happened at work.” He indicated that he was attaching statements from coworkers who were with him on May 9, 2015.⁷

By decision dated December 16, 2016, OWCP denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that, because appellant’s September 13, 2016 request neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant a review of its October 20, 2015 decision.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.⁸

A claimant seeking reconsideration of a final decision must present arguments or provide evidence that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.¹⁰ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹¹

A request for reconsideration must also be received by OWCP within one year of the date of OWCP’s decision for which review is sought.¹² For OWCP decisions issued on or after August 29, 2011, the date of the application for reconsideration is the “received date” as recorded in the Integrated Federal Employee’s Compensation System (iFECS).¹³ If the last day

⁷ The case record does not contain any such witness statements.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁰ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² 20 C.F.R. § 10.607(a).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). *See also* *C.B.*, Docket No. 13-1732 (issued January 28, 2014). For decisions issued before June 1, 1987 there is no regulatory time limit for when reconsideration requests must be received. For decisions issued from June 1, 1987 through August 28, 2011, the one-year time period begins on the next day after the date of the original decision and must be mailed within one year of OWCP’s decision for which review is sought.

of the one-year time period is a Saturday, Sunday, or a legal holiday, OWCP will still consider a request to be timely filed if it is received on the next business day.¹⁴

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record¹⁵ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶

ANALYSIS

OWCP issued a decision on October 20, 2015, and it received appellant's request for reconsideration on September 29, 2016. Appellant's request was timely filed because it was received within one year of OWCP's October 20, 2015 decision.¹⁷

The issue presented on appeal is whether appellant's September 29, 2016 request for reconsideration met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for further review of the merits of the claim.

The Board finds that appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered by OWCP.

In connection with his reconsideration request, appellant submitted a September 13, 2016 letter in which he argued that the medical reports of Dr. Herman supported a finding that he sustained a stress-related condition due to the accepted May 9, 2015 employment incident, *i.e.*, his observation of a loss of separation between two aircraft on that date. The Board notes that the underlying issue in this case is whether appellant submitted rationalized medical evidence sufficient to meet his burden of proof to establish injury causally related to the accepted May 9, 2015 employment incident, and this is a medical issue which must be addressed by relevant medical evidence.¹⁸ A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but the Board finds that appellant did not submit any such evidence in this case.¹⁹

¹⁴ *Id.* at Chapter 2.1602.4. See also *M.A.*, Docket No. 13-1783 (issued January 2, 2014).

¹⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁶ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁷ See *supra* notes 12 through 14.

¹⁸ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁹ OWCP had already considered the reports of Dr. Herman and determined that they were insufficient to establish appellant's claim for a May 9, 2015 employment injury. Although the Board does not have jurisdiction over the merits of appellant's claim, it should be noted that appellant submitted a Form CA-16 completed by Dr. Herman on June 18, 2015. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

The Board finds that the argument contained in appellant's September 13, 2016 letter is irrelevant to the main issue of this case. Appellant's own opinion on causal relationship would have no bearing on the main issue of the case which, as explained above, is medical in nature and must be addressed by relevant medical evidence. His submission of this argument would not require reopening of his claim for merit review as the Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁰

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

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2018
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

²⁰ See *supra* note 16.