

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

Appellant, then a 33-year-old ordinary seaman, filed a traumatic injury claim (Form CA-1) on January 4, 1996, alleging that he was injured, while in the performance of duty, when a light fixture struck him on the head on January 3, 1996. He stopped work that day and received continuation of pay from January 4 to February 17, 1996. OWCP accepted the claim for concussion and compression injury to the neck. Appellant received FECA wage-loss compensation from February 18, 1996 to August 16, 1997.

By December 15, 1999 decision, the Board affirmed a November 2, 1998 OWCP decision, which found that appellant had no disability after September 10, 1997 causally related to his accepted January 3, 1996 employment injury.

By decision dated September 7, 2000, OWCP expanded acceptance of the claim to include the additional conditions of chronic cervical strain, postconcussion syndrome, and left eye visual loss. Appellant again received wage-loss compensation on the periodic rolls, retroactive to September 10, 1997. By decision dated January 11, 2001, OWCP granted appellant a schedule award for 34 percent loss of use of the left eye.³ Upon expiration of the schedule award, it returned him to the periodic compensation rolls.

OWCP continued to develop the claim and, in October 2011, referred appellant to Dr. Henry J. Comiter, a Board-certified neurologist, for a second opinion evaluation. Based on Dr. Comiter's November 10, 2011 and January 10, 2013 reports, by decision dated June 5, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits. The termination was affirmed by an OWCP hearing representative on February 10, 2014. In merit decisions dated April 9, 2015 and February 1, 2016, OWCP denied modification of the prior decisions.

Appellant, through counsel, requested reconsideration on October 13, 2016. He submitted a two-page letter/pleading and an additional medical report. In a merit decision dated December 1, 2016, OWCP denied modification of its prior decisions.⁴

On October 6, 2017 appellant requested reconsideration and submitted a statement that was largely identical to his October 13, 2016 reconsideration request, but with references to his former counsel removed.

² Docket No. 99-0784 (issued December 15, 1999); Docket No. 05-0307 (issued June 9, 2005).

³ In an August 25, 2004 decision, OWCP found that appellant had received an overpayment of compensation in the amount of \$8,914.11 for the period July 25, 1999 to April 15, 2004 because he had received compensation at the augmented compensation rate when he furnished no financial support for his minor child. Appellant was found at fault in the creation of the overpayment and his compensation was reduced to the basic compensation rate. By decision dated June 9, 2005, the Board affirmed the overpayment finding. Docket No. 05-0307 (issued June 9, 2005).

⁴ At that time appellant was represented by the Webster Law Group. It withdrew representation on December 9, 2016.

By nonmerit decision dated October 13, 2017, OWCP denied appellant's October 6, 2017 request for reconsideration. It found that appellant's statement submitted on reconsideration was insufficient to warrant merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁵ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁶

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁷

ANALYSIS

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

With his October 6, 2017 reconsideration request, appellant submitted a statement which is a word-for-word copy of his October 13, 2016 request for reconsideration, but with all references to his former counsel removed. The October 13, 2016 reconsideration request was previously reviewed by OWCP in its December 1, 2016 merit decision.

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.⁸ As the document submitted on reconsideration had previously been reviewed by OWCP, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(b).

⁸ *J.M.*, Docket No. 17-1950 (issued April 2, 2018); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

previously considered by OWCP. Consequently, he 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)(3).⁹

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted no additional medical evidence with his October 6, 2017 reconsideration request.

As appellant's October 6, 2017 reconsideration request did not set forth argument or contain evidence which shows that OWCP erred in applying a point of law, advances a relevant legal argument not previously considered, or constitutes relevant and pertinent new evidence not previously considered by OWCP, the Board finds that OWCP properly denied further merit review.¹⁰

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 October 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2018
Washington, DC

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

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

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

⁹ 20 C.F.R. § 10.606(b)(3); *see R.M.*, 59 ECAB 690 (2008).

¹⁰ *M.A.*, Docket No. 16-1846 (issued October 20, 2017).