



## **FACTUAL HISTORY**

On May 3, 2016 appellant, then a 39-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that, on May 3, 2016, he sustained an injury in the form of mental trauma due to an aircraft accident that occurred while he was in the performance of duty. He stopped work on May 3, 2016.

Appellant submitted a May 4, 2016 duty status report (Form CA-17) in which Dr. Bruce S. Herman, an attending clinical psychologist, listed the date of injury as May 3, 2016 and the reported history of injury as an aircraft's emergency declaration while on appellant's control frequency and the aircraft's subsequent crash. Dr. Herman provided a diagnosis due to injury of acute stress disorder.

In a May 13, 2016 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his emotional condition claim. It asked him to complete and return an attached questionnaire, which posed various questions about the events of May 3, 2016. On May 13, 2016 OWCP also requested additional information from the employing establishment.

In a May 20, 2016 response, appellant indicated that, on May 3, 2016, he was controlling several aircraft, including one whose pilot declared an emergency due to having lost some panel instrumentation while flying in poor weather. He indicated that he asked the pilot several questions and then switched control of the aircraft to another controller. Appellant's supervisor later requested that appellant call out to the aircraft that had declared an emergency because it had dropped off the radar and it was believed that it might have crashed. Appellant indicated that his supervisor relieved him from his position as soon as another controller was available. He later learned that the aircraft in question had crashed and that all three people onboard had died. Appellant reported being very sad and having a helpless feeling after learning of the fatal accident.

In a May 16, 2016 statement, appellant's immediate supervisor discussed appellant's control of the aircraft that declared an emergency on May 3, 2016, and he indicated that appellant was "completely unfazed" while controlling the aircraft. He noted that, after the aircraft was outside of appellant's field of view, the aircraft was lost from radar. Appellant then requested that he be relieved from his position and the supervisor secured a replacement controller and relieved appellant. The supervisor expressed his opinion that appellant appeared to be abusing the workers' compensation system.

By decision dated June 15, 2016, OWCP denied appellant's claim for an employment-related emotional condition. It accepted the occurrence of an employment incident on May 3, 2016 with respect to the aircraft accident that occurred on that date. OWCP noted that it was accepted that appellant controlled an aircraft on May 3, 2016 that declared an emergency and then handed off control of the aircraft to another controller. Appellant later learned on the same day that the aircraft had crashed and that all three people onboard the aircraft had died. However, OWCP further found that he failed to submit medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted May 3, 2016 employment incident.

On December 12, 2016 appellant requested reconsideration of OWCP's June 15, 2016 decision.

Appellant submitted additional medical evidence in support of his reconsideration request, including a May 4, 2016 report from Dr. Herman who discussed his treatment of appellant on that date. Dr. Herman reported the findings of psychological testing he conducted in his office on May 4, 2016. He discussed the circumstances of the May 3, 2016 aircraft accident and detailed appellant's reported symptoms, including his ruminating about the events of May 3, 2016, difficulties with sleeping, and feelings of guilt that he could not prevent the accident. Dr. Herman indicated that appellant's current diagnosis was acute stress disorder.

By decision dated February 2, 2017, OWCP denied modification of its June 15, 2016 decision. It determined that the new medical evidence submitted by appellant failed to establish causal relationship between a diagnosed medical condition and the accepted May 3, 2016 employment incident.

On January 8, 2018 appellant requested reconsideration of OWCP's February 2, 2017 decision. In a January 2, 2018 letter, he argued that the medical evidence of record supported his claim that he sustained an emotional condition due to the circumstances surrounding the fatal aircraft accident which occurred on May 3, 2016.

In support of his reconsideration request, appellant resubmitted a copy of Dr. Herman's May 4, 2016 report. He also submitted a June 8, 2017 statement in which his immediate supervisor provided clarification of the statement he had provided in May 2016. The supervisor advised that he wished to retract the portions of his May 16, 2016 statement in which he asserted that appellant was unaffected by the events of May 3, 2016 and that he appeared to be abusing the workers' compensation system.<sup>2</sup>

By decision dated January 16, 2018, 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 submitted by appellant in support of his reconsideration request was irrelevant, immaterial, or repetitious.

### **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.<sup>3</sup>

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

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<sup>2</sup> Appellant also submitted a newspaper article about the May 3, 2016 aircraft accident.

<sup>3</sup> 5 U.S.C. § 8128(a).

relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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 Employees' Compensation System (iFECS).<sup>8</sup> If the last day 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.<sup>9</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>10</sup> and the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup>

### ANALYSIS

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).

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. He argued that the medical evidence of record supported his claim that he sustained an emotional condition due to the circumstances surrounding the fatal aircraft accident, which occurred on May 3, 2016. Appellant had assisted an aircraft, which reported an emergency situation and he later learned, after handing off control of the aircraft to another controller, that the aircraft had crashed and all three people onboard had died.

The Board notes that OWCP accepted that appellant's involvement at work with the aircraft that crashed on May 3, 2016 constituted a compensable employment factor. The underlying issue

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<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see also* *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.608(a); *see also* *C.K.*, Docket No. 18-1019 (issued October 24, 2018).

<sup>6</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>7</sup> *Id.* at § 10.607(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). 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.

<sup>9</sup> *Id.* at Chapter 2.1602.4. *See also* *M.A.*, Docket No. 13-1783 (issued January 2, 2014).

<sup>10</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>11</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

in this case, therefore, is whether appellant submitted medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted May 3, 2016 employment incident and this is a medical issue which must be addressed by relevant medical evidence.<sup>12</sup>

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.<sup>13</sup> In support of his reconsideration request, appellant resubmitted a copy of a May 4, 2016 report of Dr. Herman, an attending clinical psychologist. The resubmission of this report does not require reopening of appellant's claim for review of the merits of the claim because OWCP has already considered Dr. Herman's May 4, 2016 report and determined that it failed to establish appellant's claim for an employment-related emotional condition. 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>14</sup>

Appellant submitted a June 8, 2017 statement in which his immediate supervisor provided clarification of the statement he had provided in May 2016. He also submitted a newspaper article about the May 3, 2016 aircraft accident. The submission of this factual evidence does not require reopening of appellant's claim for review of the merits of the claim because this evidence is not relevant to the underlying issue of the present case. As noted, the underlying issue of the present case is medical in nature, *i.e.*, whether appellant submitted medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted May 3, 2016 employment incident. 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.<sup>15</sup>

The Board accordingly 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).

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<sup>12</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>13</sup> See *supra* note 4.

<sup>14</sup> See *supra* note 10.

<sup>15</sup> See *supra* note 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2019  
Washington, DC

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

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

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