

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

FACTUAL HISTORY

On June 12, 2018 an occupational disease claim (Form CA-2) was filed on behalf of appellant, then a 41-year-old forestry technician (silviculture), alleging that he sustained an injury in the performance of duty due to loading fence material and running a chainsaw while working outdoors on June 6 through 8, 2018.³ It was claimed that he was diagnosed with dehydration, tetany, and chills.⁴ Appellant stopped work on June 8, 2018.

By development letter dated June 19, 2018, 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 employment activities/exposures caused or aggravated a medical condition. It afforded him 30 days to respond.⁵

Appellant submitted a June 9, 2018 report from Dr. John M. Page, an attending Board-certified emergency medicine physician, who advised that appellant reported experiencing fever, chills, muscle spasms in his hands and legs, generalized fatigue/weakness, and slight nausea for the past 8 to 12 hours. He reported that his symptoms followed his spending a day at work welding fences outdoors in warm weather. Dr. Page listed findings of the laboratory testing and physical examination conducted on June 9, 2018.⁶ He noted that the results were positive for heat intolerance, decreased urine volume, and arthralgias/myalgias, and indicated that appellant was intravenously given a liter of normal saline. Dr. Page diagnosed dehydration, tetany, and chills, and recommend that appellant rest at home. He advised that appellant could return to regular work as tolerated on June 11, 2018.

By decision dated July 23, 2018, OWCP accepted that appellant had established employment factors in the form of welding fences, loading fence material, and running a chainsaw for several days in June 2018. However, it denied his claim, finding that he had not submitted medical evidence sufficient to establish a medical condition causally related to the accepted factors of his federal employment. OWCP concluded, therefore, that appellant had not met the requirements to establish "an injury and/or medical condition causally related to the accepted work event(s)."

³ The Form CA-2 is not signed, but appears to have been completed by appellant's immediate supervisor.

⁴ It was claimed that appellant was exposed to temperatures in the mid-80s on June 8, 2018 and that, when he arrived at the hospital, he had a temperature of 102 degrees with a bad headache and severe cramping in his hands and arms. He noted that he first became aware of his claimed condition on June 8, 2018 and first realized that it was related to his federal employment on the same date.

⁵ On June 19, 2018 OWCP also requested additional information from the employing establishment which was to be submitted within 30 days.

⁶ Dr. Page also noted that chest x-rays obtained on June 9, 2018 contained an impression of no acute cardiopulmonary process.

On August 10, 2018 appellant requested reconsideration of the merits of his claim and submitted a copy of the previously submitted June 9, 2018 report of Dr. Page.⁷

The employing establishment subsequently submitted a July 26, 2018 e-mail in which a human resources specialist from the employing establishment recommended that appellant request reconsideration of his claim with OWCP and submit an additional medical report from an attending physician.

By decision dated September 18, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁹ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.¹⁰ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.¹²

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹³ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

⁷ This copy of the June 9, 2018 report contained the same text as that contained in the previously submitted copy, but the text was formatted in a different order.

⁸ *Supra* note 1.

⁹ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹¹ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹² *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to factors of his federal employment.

Appellant submitted a June 9, 2018 report from Dr. Page, who advised that appellant reported experiencing fever, chills, muscle spasms in his hands and legs, generalized fatigue/weakness, and slight nausea after welding fences at work. Dr. Page listed findings of the laboratory testing and physical examination conducted on June 9, 2018 and diagnosed dehydration, tetany, and chills. He posited that appellant could return to regular work as tolerated on June 11, 2018.

Dr. Page, in his June 9, 2018 report, briefly noted the employment activities reported by appellant, but did not provide an opinion on the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ Therefore, this report is insufficient to establish appellant's claim.

As the record does not contain a well-rationalized opinion establishing causal relationship between appellant's medical conditions and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁶

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.¹⁷ If OWCP determines

¹⁴ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ 5 U.S.C. § 8128(a).

¹⁷ 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).

that, at least one of these requirements is met, it reopens and reviews the case on its merits.¹⁸ 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.¹⁹

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²⁰ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²¹ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²²

ANALYSIS -- ISSUE 2

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 filed a timely request for reconsideration,²³ but he did not establish that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered by OWCP.²⁴ Accordingly, the Board finds that he is not entitled to a review of the merits based on either the first or second requirements under 20 C.F.R. § 10.606(b)(3).

In support of his request for reconsideration, appellant resubmitted a copy of the June 9, 2018 report of Dr. Page which had already been considered by OWCP and deemed insufficient to establish his claim. His submission of this report does not require reopening of his claim for review on the merits because the Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.²⁵ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).

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

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

¹⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010). To be timely, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought. *Id.* at § 10.607(a).

²⁰ *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²¹ *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²² *John F. Critz*, 44 ECAB 788, 794 (1993).

²³ *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

²⁴ *See supra* note 17.

²⁵ *See supra* note 20.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 18 and July 23, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 1, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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