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T.M., Appellant)	
)	
and)	Docket No. 21-1310
)	Issued: March 7, 2022
DEPARTMENT OF THE NAVY, MARINE)	
CORPS LOGISTICS BASE, Albany, GA,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 24, 2021 appellant filed a timely appeal from an April 29, 2021 merit decision and an August 5, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability beginning March 5, 2020 causally related to his accepted June 28, 2000 employment

² The Board notes that, following the August 5, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board on separate issues.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 18, 2000 appellant, then a 46-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2000 he injured his left shoulder and neck when installing a starter on an earthmover while in the performance of duty. He stopped work on June 28, 2000 and returned to work on July 10, 2000. OWCP accepted the claim, assigned OWCP File No. xxxxxx970 for right lateral epicondylitis and displacement of a cervical intervertebral disc without myelopathy.

OWCP accepted that appellant sustained a right-hand contusion, a crush injury of the right fingers, right carpal tunnel syndrome, a right Boutonniere deformity, and traumatic right hand arthropathy due to a May 8, 2001 employment injury under OWCP File No. xxxxxx500 and right carpal tunnel syndrome due to a June 5, 2003 employment injury under OWCP File No. xxxxxx576. It administratively combined these claims with OWCP File No. xxxxxx970, with the latter serving as the master file.

On December 9, 2004 the employing establishment notified appellant of its decision to remove him for cause.

On July 23, 2019 OWCP expanded its acceptance of the claim to include impingement syndrome of the left shoulder.

In a report dated March 10, 2020, Dr. John D. Marshall, who specializes in family medicine, diagnosed displacement of a cervical intervertebral disc without myelopathy, hypertension, and a shoulder injury.

In an April 22, 2020 report, Dr. Robert V. Glover, Jr., a cardiologist, discussed appellant's history of paroxysmal supraventricular tachycardia due to chemical exposure at work.

In a progress report dated May 6, 2020, Dr. Jeffrey A. Fried, a Board-certified orthopedic surgeon, evaluated appellant for left arm weakness and noted that appellant was disabled and had not worked in two years. He diagnosed cervical disc displacement, right carpal tunnel syndrome, contracture at the proximal interphalangeal (PIP) joint of the right little finger, rotator cuff syndrome, left elbow bursitis, right shoulder pain, impingement syndrome of the left shoulder, a thyroid cyst, spondylolisthesis, grade 1, spondylolisthesis of the lumbar spine, and supraventricular tachycardia.

³ Docket No. 15-1477 (issued October 22, 2015); Docket Nos. 09-1090 and 09-0226 (issued March 8, 2010).

On June 25, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 5 to June 25, 2020. The employing establishment indicated on the form that he had been removed for cause on December 13, 2004.

In a development letter dated July 2, 2020, OWCP indicated that appellant was alleging a recurrence of disability on or around March 5, 2020. It noted that he had received schedule award compensation through March 5, 2020 and had not been in receipt of wage-loss compensation prior to the period of his schedule award. OWCP indicated that the employing establishment had terminated appellant for cause effective December 13, 2004. It notified him of the definition of a recurrence of disability and requested that he provide additional factual and medical information supporting that his accepted condition worsened such that he was disabled from employment. OWCP afforded appellant 30 days to respond to the request.

In an undated response received July 28, 2020, appellant asserted that he had not worked since June 2008. He noted that the Social Security Administration (SSA) had found that he was disabled in 2008. Appellant related that Dr. Fried had found that he was disabled under the current file number. He submitted a decision from SSA finding that he was disabled as of December 4, 2007.

In a progress report dated August 5, 2020, Dr. Fried evaluated appellant for left shoulder pain and indicated that appellant was unable to work or perform overhead reaching. He diagnosed other cervical disc displacement, right carpal tunnel syndrome, contracture at the PIP joint of the right little finger, rotator cuff syndrome, left elbow bursitis, right shoulder pain, impingement syndrome of the left shoulder, a thyroid cyst, spondylolisthesis of the lumbar spine, and supraventricular tachycardia. Dr. Fried opined that appellant remained disabled.

By decision dated August 28, 2020, OWCP found that appellant had not established a recurrence of disability beginning March 5, 2020 causally related to his accepted June 28, 2000 employment injury.

On September 12, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a report dated October 6, 2020, Dr. Fried evaluated appellant for left shoulder pain. He noted that appellant had not worked in two years. Dr. Fried repeated the diagnoses in his prior report. He again opined that appellant remained disabled.

By decision dated December 9, 2020, OWCP's hearing representative affirmed the August 28, 2020 decision.

On January 12, 2021 Dr. Fried advised that appellant "remains unemployable. [Appellant] has multiple orthopedic problems including cervical disc displacement, right carpal tunnel syndrome, contracture of right little finger, bursitis of left elbow, impingement and joint pain in right shoulder and left shoulder, and spondylolisthesis of the lumbar spine. In addition, [appellant] has a history of supraventricular tachycardia with his heart." He concluded that appellant was "disabled from participating in the economy." In a January 12, 2021 progress report, Dr. Fried provided his previous diagnoses and noted that appellant remained disabled.

On February 18, 2021 appellant requested reconsideration. He submitted an April 14, 2021 progress report from Dr. Fried, who provided the same diagnoses and found that appellant remained disabled.

By decision dated April 29, 2021, OWCP denied modification of its December 9, 2020 decision.

Thereafter, appellant resubmitted the January 12 and April 14, 2021 reports from Dr. Fried and a January 22, 2010 SSA decision, finding that appellant was disabled beginning December 4, 2007. He further submitted a March 2013 consultation report regarding his treatment for tachycardia and an October 9, 2014 cardiology report.

In a rating decision dated June 1, 2021, the Department of Veterans Affairs (DVA) continued its finding that appellant was 50 percent disabled due to sleep apnea and 30 percent disabled due to supraventricular tachycardia.

On July 20, 2021 appellant requested reconsideration.

By decision dated August 5, 2021, OWCP denied appellant's request for reconsideration as he had not submitted evidence or raised an argument sufficient to warrant reopening his claim for merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative

⁴ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability beginning March 5, 2020 causally related to his accepted June 28, 2000 employment injury.

Appellant returned to work following his June 28, 2000 employment injury on July 10, 2000. In December 2004, the employing establishment removed him from employment for cause.

On January 12, 2021 Dr. Fried opined that appellant remained disabled from employment. He diagnosed cervical disc displacement, right carpal tunnel syndrome, contracture of right little finger, bursitis of left elbow, impingement, joint pain in right shoulder and left shoulder, spondylolisthesis of the lumbar spine, and supraventricular tachycardia. Dr. Fried, however, failed to address the cause of appellant's disability or its relationship to his accepted employment injury. 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.⁹

In progress reports dated May 6, August 5, and October 6, 2020, Dr. Fried discussed appellant's complaints of left shoulder pain and diagnosed other cervical disc displacement, right carpal tunnel syndrome, contracture at the PIP joint of the right little finger, rotator cuff syndrome, left elbow bursitis, right shoulder pain, impingement syndrome of the left shoulder, a thyroid cyst, and spondylolisthesis of the lumbar spine. On May 6, 2020 he noted that appellant had not worked in two years and was disabled. In his August 5 and October 6, 2020 reports, Dr. Fried indicated that appellant remained disabled. He, while finding that appellant was disabled, did not address whether the disability was causally related to the accepted employment injury. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship or disability.¹⁰ Without a specific opinion regarding how the accepted employment injury caused a recurrence of disability, Dr. Fried's reports are insufficient to meet appellant's burden of proof.¹¹

⁷ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁸ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

⁹ *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.O.*, *supra* note 7; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *See id.*

¹¹ *See D.B.*, Docket No. 21-0503 (issued August 24, 2021).

In a March 10, 2020 report, Dr. Marshall diagnosed displacement of a cervical intervertebral disc without myelopathy, hypertension, and a shoulder injury. On April 22, 2020 Dr. Glover advised that appellant had a history of paroxysmal supraventricular tachycardia due to chemical exposure at work. As these reports, however, fail to address the issue of whether appellant was disabled from employment beginning March 2020, they are of no probative value.¹²

As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling conditions and the accepted injuries. Furthermore, the medical evidence must directly address the dates of disability for work for which compensation is claimed.¹³ None of the medical evidence of record provided a discussion of how appellant's accepted conditions caused disability during the period in question.¹⁴ Appellant, therefore, 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 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. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.¹⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens

¹² See *R.J.*, Docket No. 19-0179 (issued May 26, 2020); see also *supra* note 11.

¹³ *L.V.*, Docket No. 19-1725 (issued April 5, 2021); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

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

¹⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. *Supra* note 6 at Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

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

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 has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).²⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Appellant submitted a March 2013 report diagnosing tachycardia and an October 9, 2014 cardiology report. He also submitted a DVA rating decision finding that he was 50 percent disabled due to sleep apnea and 30 percent disabled due to supraventricular tachycardia. This evidence, however, is not relevant to the underlying issue of whether appellant has established a recurrence of disability beginning March 5, 2020 causally related to his accepted June 28, 2000 employment injury. The Board has held the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.²¹

Appellant resubmitted a January 22, 2010 SSA decision, finding that he was disabled beginning December 4, 2007 and reports from Dr. Fried dated January 12 and April 14, 2021. The Board has held, however, that evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case for merit review.²² Appellant has not provided relevant and pertinent new evidence and, thus, is not entitled to a merit review based on the third requirement under section 10.606(b)(3).²³

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.²⁴

¹⁸ *Id.* at § 10.608(a); *see also F.V.*, Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *Id.* at § 10.606(b)(3)(i) and (ii); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

²¹ *See P.G.*, Docket No. 20-1419 (issued September 16, 2021); *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

²² *See T.T.*, Docket No. 19-0559 (issued July 19, 2019); *D.K.*, 59 ECAB 141 (2007); *Eugene F. Butler*, 36 ECAB 393 (1984).

²³ 20 C.F.R. § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

²⁴ *T.G.*, Docket No. 20-0329 (issued October 19, 2020); *C.C.*, Docket No. 17-0043 (issued June 15, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability beginning March 5, 2020 causally related to his accepted June 28, 2000 employment injury. 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 August 5 and April 29, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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