

**United States Department of Labor
Employees' Compensation Appeals Board**

R.O., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, College Park, GA,
Employer**

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**Docket No. 12-1775
Issued: December 3, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 16, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) March 30, 2012 nonmerit decision denying his request for merit review. OWCP's last merit decision was its February 23, 2011 decision denying appellant's claim for wage-loss benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 5, 2009 appellant, a 41-year-old federal air marshal, filed a traumatic injury claim alleging that he sustained injuries to his neck and upper back on August 3, 2009 while performing a training exercise. In support of his claim, he submitted an August 24, 2009 report of a magnetic resonance imaging (MRI) scan and a September 2, 2009 attending physician's report from Dr. Tariq Javed, a Board-certified neurological surgeon, who diagnosed cervical spondylosis and stenosis.

By decision dated August 15, 2009, OWCP denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed medical condition was causally related to the established work event.

On March 24, 2009 appellant requested a review of the written record. By decision dated January 26, 2010, an OWCP hearing representative affirmed the August 15, 2009 decision.

On February 17, 2010 appellant requested reconsideration. He submitted a copy of Dr. Javed's September 2, 2009 attending physician's report, which was updated to indicate his belief that appellant was injured during a training exercise.

In a decision dated February 25, 2010, OWCP denied appellant's reconsideration request, finding that the evidence submitted did not warrant a merit review.

On January 14, 2011 appellant, through counsel, again requested reconsideration and submitted additional medical evidence. In a January 6, 2010 report, Dr. Kevin Hsieh, a treating physician, stated that he reviewed appellant's medical records, including a cervical spine MRI scan that revealed cervical spondylosis at C5-6 and C6-7. His examination revealed restricted range of motion of the neck and left shoulder. Appellant's complaints of pain during testing and numbness down the left arm were consistent with cervical spondylosis. Dr. Hsieh described the alleged injury as reported by appellant. Regarding the cause of appellant's cervical condition, Dr. Hsieh stated:

"From my review of [appellant]'s job duties and the diagnostic medical evidence, it is my professional medical opinion that the physical stress placed upon Mr. Otero's neck (cervical spine) during the training incident on August 3, 2009 is the direct causation to his cervical spondylosis without myelopathy. It is my firmest medical opinion that these conditions are definitively work related due to the traumatic injury [appellant] sustained to his neck and left shoulder in the performance of his duties on August 3, 2009 when he was attempting to get free from the chokehold during the training exercise."

By decision dated February 23, 2011, OWCP denied modification of its January 26, 2010 decision. It found that Dr. Hsieh's report was insufficiently rationalized to establish a causal relationship between the August 2009 training event and appellant's diagnosed condition.

On February 2, 2012 appellant again requested reconsideration of his claim. In support of his request, he submitted a December 13, 2010 narrative report from Dr. Mark W. Freeman, a treating physician, whose report reiterated the information contained in Dr. Hsieh's January 6,

2010 report regarding the history of injury as related by appellant, his review of the medical record and examination findings. Regarding the cause of appellant's diagnosed condition, Dr. Freeman stated:

“From my review of [appellant]’s job duties and the diagnostic medical evidence, it is my professional medical opinion that the physical stress placed upon Mr. Otero’s neck (cervical spine) during the training incident on August 3, 2009 is the direct causation to his cervical spondylosis without myelopathy and traumatic spondylopathy. It is my firmest medical opinion that these conditions are definitively work related due to the traumatic injury [appellant] sustained to his neck and left shoulder in the performance of his duties on August 3, 2009 when he was attempting to get free from the chokehold during the training exercise.”

By decision dated March 30, 2012, OWCP denied appellant’s request for reconsideration on the grounds that the evidence was insufficient to warrant merit review. It found that Dr. Freeman’s December 13, 2010 report was substantially similar to evidence of record that had been previously considered.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.² To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁴ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁵

ANALYSIS

Appellant’s February 2, 2012 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant 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)(2). A claimant may be entitled to a merit

² 20 C.F.R. § 10.606(b)(2).

³ *Id.* at § 10.607(a).

⁴ *Id.* at § 10.608(b).

⁵ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

review by submitting new and relevant evidence. The Board finds that appellant did not submit any new and relevant medical evidence in this case.

Appellant submitted a December 13, 2010 narrative report from Dr. Freeman who did not provide new information. Rather, Dr. Freeman merely reiterated the information contained in Dr. Hsieh's January 6, 2010 report regarding the history of injury as related by appellant, his review of the medical record and examination findings. The Board notes that Dr. Freeman repeated nearly verbatim the opinion expressed by Dr. Hsieh as to the cause of appellant's diagnosed cervical spondylosis and spondylopathy. Dr. Freeman's December 13, 2010 report is therefore duplicative in nature.⁶ The Board finds that his report does not constitute relevant and pertinent new evidence not previously considered by OWCP.⁷ Therefore, OWCP properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that OWCP properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his February 2, 2012 request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

⁷ See *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board