

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).

FACTUAL HISTORY

This case has previously been before the Board. On December 4, 1992 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that his depression and anxiety were employment related. OWCP accepted his claim for major depression and placed him on the periodic rolls for temporary total disability.⁴ By decision dated July 9, 2004, it finalized the termination of appellant's compensation effective July 10, 2004 on the grounds that his accepted condition had resolved. OWCP's hearing representative affirmed this decision on September 20, 2005. By decision dated August 6, 2007, the Board set aside OWCP's October 20, 2006 nonmerit decision denying appellant's reconsideration request and remanded the case for a review of the merits.⁵ The Board found that OWCP had failed to consider new and relevant medical evidence which had been submitted following the report of the impartial medical examiner. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

The facts relevant to this appeal are set forth. In a July 24, 2003 memorandum, the Office referred appellant to an impartial medical examiner based on a conflict in medical opinion between James Zender, Ph.D., appellant's treating clinical psychologist, and Dr. Elliott M. Wolf, a second opinion Board-certified psychiatrist, as to whether appellant continued to have residuals of his accepted major depression and was totally disabled from either a rehabilitation program or return to work. In an attached January 10, 2003 statement of accepted facts (SOAF), OWCP set forth compensable and noncompensable employment factors. The two compensable factors of employment included threats of bodily harm by Janette Thompson, appellant's supervisor, in 1988 or 1989 and a statement made by Bill Barton, a supervisor, in August 1991 that he wanted to have a fistfight with appellant, which did not occur. It noted a number of noncompensable factors of employment including that appellant was questioned on November 21, 1991 by postal inspectors regarding his comments to the media about the November 14, 1991 Royal Oak Post Office mass shooting and that he was transferred back to the employing establishment against his wishes in March 1993. In the July 9, 2004 decision finalizing the termination of appellant's compensation benefits, OWCP addressed his arguments regarding the accepted factors of employment and the SOAF. It detailed extensively what the accepted factors of employment, were, why additional factors were not accepted, his referral for vocational rehabilitation, work history and the sufficiency of the medical opinion evidence.

By decision dated September 13, 2007, OWCP denied modification of the termination decision. It found the medical report from Dr. Jarrett M. Schroeder, a Board-certified psychiatrist and impartial medical examiner, represented the special weight of the evidence in establishing that appellant's employment-related emotional condition had resolved. OWCP

⁴ Appellant stopped work on May 8, 1993 and has not returned.

⁵ Docket No. 07-714 (issued August 6, 2007).

found the reports from Dr. Zender and Dr. Robert Pohl, a treating Board-certified psychiatrist, were insufficient to create a new conflict with Dr. Schroeder.

On August 11, 2008 OWCP received appellant's request for reconsideration. In a September 11, 2008 letter, appellant contended that the termination of his compensation benefits was in error. He contended that SOAF provided to Dr. Schroeder was inaccurate. In a May 9, 2008 report, Dr. Pohl, noted that appellant had been diagnosed with chronic major depression, panic disorder with agoraphobia, impulse control and intermittent explosive personality. He reviewed Dr. Schroeder's report and stated his disagreement that appellant had no mood or anxiety disorder. Dr. Pohl advised that appellant continued to have anxiety attacks and depression as evidenced by his living in basement by himself. He stated that his opinion on disability remained the same.

By decision dated January 8, 2009, OWCP denied modification. It found Dr. Pohl's May 9, 2008 report to be unrationalized and insufficient to create a conflict with Dr. Schroeder.

In a letter dated January 6, 2010, appellant requested reconsideration and presented legal argument in support of his request. He contended that OWCP erred when it updated the original SOAF in January 1997. Appellant contended that the 1997 SOAF was inaccurate and omitted relevant information contained in the original SOAF. He submitted a copy of a 1997 SOAF, indicating that an incident of verbal abuse by Manager John Thomas was omitted; that a date of another incident occurring in February 1990 was incorrectly listed and that "all opinions are not part of original SOAF nor part of case record." Appellant noted that the January 1997 SOAF contained 75 percent less information than the original one as well as added some facts. He noted that in the 1997 SOAF, the claims examiner included her opinion of his feelings regarding the incident not accepted as factors of employment. Appellant claimed that the updated SOAF incorrectly stated that "[b]ecause most of the decisions were not favorable to the claimant he felt that he was subject to harassment" on various administrative actions from 1988 to 1993. With respect to the date 1993, he pointed out that it was incorrectly listed as 1933. Appellant noted that the length of his disease and claims of harassment were not included in the updated SOAF. He contended that the updated SOAF failed to contain information regarding the Royal Oak Shootings in 1991, the May 6, 1993 murders and injuries at the Allen Park Michigan office. Appellant also contends that the reports of Drs. Zender and Pohl should be accorded determinative weight as they were based on an accurate history. In addition he contended that OWCP ignored Dr. Zender's October 4, 2004 report and Dr. Pohl's May 9, 2008 report. Appellant also contended that OWCP improperly sent him back to work and that the employing establishment discharged him from work after two days. He contended that OWCP failed to consider the issues regarding his reinstatement with the employing establishment and subsequently being told that there were no job vacancies available within his restrictions. Appellant also contends that the affidavit and March 22, 2005 determination that he was unfit for duty by Vanita Wallace support a finding that his disability was work related and that OWCP failed to consider an August 27, 2004 statement by Michael Vigliotti, a postmaster, regarding his return to work. He also argues that there is no evidence in the record regarding his removal from the employing establishment's rolls, a separation by the employing establishment or his reinstatement. Lastly, appellant contends that OWCP erred in failing to contact or obtain evidence from Dr. Pohl.

By decision dated January 22, 2010, OWCP denied further reconsideration of the merits.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of the Act,⁶ OWCP's regulations provide that 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 by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.⁷ To be entitled to a merit review of 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.⁸ 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.⁹

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.¹⁰ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

ANALYSIS

The only decision before the Board is the January 22, 2010 nonmerit decision denying appellant's request for reconsideration of OWCP's July 9, 2004 merit decision terminating his compensation benefits. The underlying issue is whether he established any disability or residuals due to his accepted major depression resulting from the two accepted factors of threats of bodily harm made by Ms. Thompson in 1988 or 1989 and Mr. Barton's statement in August 1991 that he wanted to have a fistfight with appellant, which did not occur. The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant new argument not previously considered nor did he provide any relevant or pertinent

⁶ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁷ 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

⁸ 20 C.F.R. § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

⁹ 20 C.F.R. § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

¹⁰ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

¹¹ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

new evidence regarding whether he continued to suffer from an employment-related emotional condition.¹²

Appellant requested reconsideration and reiterated his previous legal arguments regarding the adequacy of a January 9, 1997 SOAF. He contended that the updated SOAF was incorrect as it omitted information and added facts and, therefore, any medical report based on this incorrect statement of facts should not be relied on by OWCP. Appellant also contended that OWCP omitted accepted factors of employment as well as mischaracterizing incidents he alleged as contributing to his condition, but which were not accepted as compensable. The Board finds that these arguments were previously considered and rejected by OWCP in its July 9, 2004 decision terminating his compensation benefits and in its September 13, 2007 and January 8, 2009 decisions denying modification. Appellant's contention that OWCP omitted information regarding the Royal Oak Shootings in 1991, the May 6, 1993 murders and injuries at the Allen Park, Michigan office does not appear relevant as he was not working at either of these facilities at the time these incidents occurred. Consequently, he was not entitled to a review of the merits of his case based on the first or second above-noted requirements under 20 C.F.R. §10.606(b)(2).

Appellant also alleged that OWCP ignored Dr. Pohl's May 9, 2008 report which diagnosed chronic major depression, panic disorder with agoraphobia, impulse control and intermittent explosive personality. Dr. Pohl related in his conclusion that his original opinion remained the same. The Board finds that his May 9, 2008 report essentially repeats information contained in the physician's reports previously received and considered by OWCP. This evidence was, therefore, cumulative and duplicative in nature.¹³ Accordingly, the Board finds that 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 case pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(2) and, thus, properly denied his request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration without merit review of the case.

¹² See *L.H.*, 59 ECAB 253 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (section 10.608(b) of Office regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

¹³ 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. *R.M.*, 59 ECAB 690 (2008); *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 22, 2010 is affirmed.

Issued: July 14, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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