



## **FACTUAL HISTORY**

On December 3, 2010 appellant, then a 40-year-old special agent, filed traumatic injury claim (Form CA-1) alleging that he sustained a cut on his right leg and pain in his right hand as a result of an automobile accident which occurred in the performance of duty on November 30, 2010.

By letter dated March 22, 2011, OWCP notified appellant of the deficiencies of his claim and requested additional factual and medical evidence. It allotted 30 days for the submission of additional evidence. Appellant did not respond.

By decision dated April 22, 2011, OWCP denied appellant's claim on the basis that the evidence he submitted was not sufficient to establish causal relationship between the injury and the accepted employment incident.

On August 15, 2011 appellant requested reconsideration and submitted an August 15, 2011 narrative statement, indicating that he was involved in an automobile collision with a tractor-trailer on November 30, 2010 and went to the hospital that same day per the advisement of his supervisor. He was seen and released from the hospital that day. Appellant contended that the medical expenses incurred from the hospital visit were not his responsibility as a federal employee who was involved in an accident during the performance of duty.

Appellant also submitted an April 12, 2011 letter from his supervisor stating that appellant was in the performance of duty on November 30, 2010, a traffic crash report dated November 30, 2010 and a travel authorization form issued on November 23, 2010.

By decision dated September 13, 2011, OWCP denied appellant's request for reconsideration of the merits finding that the submitted evidence was either cumulative, repetitious or irrelevant.

## **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>3</sup> OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>4</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's 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 by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup> To be entitled to a merit review

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>4</sup> See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2). See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

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.<sup>6</sup> 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.<sup>7</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>8</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>9</sup>

### ANALYSIS

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of his August 15, 2011 reconsideration request, appellant submitted an August 15, 2011 narrative statement, an April 12, 2011 letter from his supervisor, a November 30, 2010 traffic crash report and a travel authorization form. The Board finds that submission of these documents did not require reopening appellant's case for merit review as they were focused on whether he was in the performance of duty at the time of injury and did not provide rationalized medical opinion evidence addressing the issue of causal relationship between the injury and the employment incident of November 30, 2010, which was the threshold issue before OWCP. Therefore, they do not constitute relevant and pertinent new evidence and are not sufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP, nor did he submit any pertinent new and relevant evidence not previously considered. The Board finds that he did not meet any of the necessary requirements and he is not entitled to further merit review.<sup>10</sup>

### CONCLUSION

The Board finds that appellant failed to submit relevant and pertinent new evidence not previously considered by OWCP, a relevant legal argument not previously considered by OWCP, or evidence or argument which shows that OWCP erroneously applied or interpreted a

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<sup>6</sup> *Id.* at § 10.607(a).

<sup>7</sup> *Id.* at § 10.608(b).

<sup>8</sup> *See A.L., supra* note 5. *See also Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>9</sup> *Id.* *See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>10</sup> *See L.H.*, 59 ECAB 253 (2007).

specific point of law. Therefore, OWCP properly refused to reopen appellant's claim for further consideration of the merits of his claim under 5 U.S.C. § 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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