

a final rule that took effect November 15, 2012,¹ we amended § 821.50(c) to provide as follows concerning the content of such petitions:

The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed. *To the extent the petition is not based upon new matter, the Board will not consider arguments that could have been made in the appeal or reply briefs received prior to the Board's decision.*²

In addition, § 821.50(d) states, “[r]epetitious petitions will not be entertained by the Board, and will be summarily dismissed.”

In our December 31, 2013 opinion and order, we considered respondent’s arguments concerning the reasonableness of the Administrator’s request he undergo a mental health evaluation and the purported preclusive effect of an arbitral award in a collective-bargaining dispute between Eastern Airlines and respondent, who was at the time an Eastern pilot. The petition at issue here, dated January 21, 2014, presents the same arguments we considered and rejected on review of respondent’s appeal. In addition, the petition contains, in part, new matter. Although this new matter is irrelevant to respondent’s underlying claim, he does not explain why the new matter could not have been presented prior to the Board’s issuance of its final opinion, as required by § 821.50(c).

ACCORDINGLY, IT IS ORDERED THAT:

Respondent’s petition is dismissed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

¹ 77 Fed. Reg. 63245, 63252 (Oct. 16, 2012).

² 49 C.F.R. § 821.50(c) (emphasis added).