

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

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H.B., Appellant )

and )

**U.S. POSTAL SERVICE, HOLIDAY STATION,  
Anaheim, CA, Employer**)

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**Docket No. 06-1305  
Issued: October 31, 2006**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 17, 2006 appellant filed a timely appeal from a December 19, 2005 Office of Workers' Compensation Programs' decision, denying his recurrence of disability claim, and an April 14, 2006 decision, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained a recurrence of disability or a right knee condition causally related to his accepted left knee strain; and (2) whether the Office abused its discretion in denying his request for reconsideration.

**FACTUAL HISTORY**

On February 22, 1989 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a left knee injury on February 21, 1989 while walking his mail route. The Office accepted his claim for a left knee strain and surgery was performed on

July 19, 1989. Appellant retired effective February 3, 2000. On March 29, 2004 he filed a claim for a recurrence of disability.<sup>1</sup>

The record shows that appellant was medically released to regular duty as of April 2, 1990. In an August 9, 1990 report, Dr. David L. Tsoong, an attending Board-certified orthopedic surgeon, stated that appellant was not disabled from his usual work duties. He indicated that any residual problems in appellant's left knee were due to nonwork-related osteoarthritis. There are no medical reports of record subsequent to the August 9, 1990 report from Dr. Tsoong.

On April 28, 2004 the Office asked appellant to submit additional evidence, including a detailed medical report explaining how his claimed recurrence of disability was causally related to his February 21, 1989 left knee strain. No medical evidence was submitted.

By decision dated June 3, 2004, the Office denied appellant's claim for a recurrence of disability causally related to his accepted left knee strain.

On June 21, 2004 appellant requested reconsideration. He submitted a June 14, 2004 letter indicating that he sustained an injury to his right knee while performing his duties and compensating for his left knee condition. In a July 7, 2004 letter, the Office advised appellant to elect a specific appeal right.

Appellant submitted a copy of a September 30, 2005 letter from his congressional representative indicating that he wished reconsideration of the denial of his recurrence of disability claim.

By decision dated December 19, 2005, the Office denied modification of the June 3, 2004 decision.

Appellant requested reconsideration. He did not submit any additional evidence.

On April 14, 2006 the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of providing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that

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<sup>1</sup> Appellant did not provide a date for the recurrence of disability or any details as to the nature of the recurrence.

<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

conclusion with sound medical rationale.<sup>3</sup> “*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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>4</sup> (Emphasis in the original.)

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the claimant’s condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

Appellant sustained a left knee strain on February 21, 1989 in the performance of duty. On March 29, 2004 he filed a claim for a recurrence of disability and a right knee condition causally related to his accepted left knee strain.

The record shows that appellant was medically released to regular duty on April 2, 1990. There are no medical reports of record between August 9, 1990 and his March 29, 2004 claim for a recurrence of disability. On July 7, 2004 the Office advised appellant as to the medical evidence required to establish a recurrence of disability claim. However, he submitted no medical evidence. It is appellant’s burden to provide medical evidence establishing that his recurrence of disability or right knee condition was causally related to his accepted left knee strain. The Board finds that appellant failed to meet his burden of proof to establish that he sustained a work-related recurrence of disability.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Federal Employees’ Compensation Act<sup>6</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review, may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

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<sup>3</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>6</sup> 5 U.S.C. § 8128(a).

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

Appellant did not submit any additional evidence in support of his request for reconsideration. He did not present any relevant legal argument not previously considered by the Office or show that the Office erroneously applied or interpreted a specific point of law. Therefore, appellant did not meet his burden of proof to obtain further merit review of his claim. The Office properly denied his reconsideration request.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability or a right knee condition causally related to his accepted left knee strain. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

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<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 14, 2006 and December 19, 2005 are affirmed.

Issued: October 31, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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