

On October 31, 2005 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he developed advanced osteoarthritis of both knees as a result of his work. He stopped work on October 5, 2005 and did not return. In an undated statement, appellant stated that carrying mail on his route aggravated his chronic osteoarthritis of both

knees. He also attributed his condition to the insufficient leg room in his postal vehicle and the excessive climbing in and out of it.

On October 25, 2005 Dr. James Rang, a Board-certified orthopedic surgeon, noted that appellant's job exacerbated his arthritic condition and caused his symptoms making it difficult for appellant to do his job on a daily basis. In a Form CA-17, duty status report, of the same date he diagnosed osteoarthritis of the knees and noted that appellant could not return to work.

After the Office advised appellant of the type of evidence needed to establish his claim, he submitted work restriction forms dated September 30, 2002 and October 4, 2005 from Dr. Roy DeFries, Board-certified in family medicine, who diagnosed arthritis in the knees and listed work restrictions. In an October 25, 2005 report, Dr. Rang noted appellant's history of bilateral knee pain that was greater on the left than the right. He also noted known advanced osteoarthritis of the knee with bone-on-bone contact. Dr. Rang diagnosed advanced osteoarthritis of the knees bilaterally and morbid obesity. He advised conservative management of appellant's knee replacement with his morbid obesity. Dr. Rang further advised that appellant could return for treatment on an as-needed basis.

By decision dated March 8, 2006, the Office denied appellant's claim for compensation finding that he did not establish that the claimed medical condition was related to the established work events.

On April 10, 2006 appellant requested an oral hearing. On May 2, 2006 he requested that the hearing be held in Evansville, Indiana. In a January 9, 2007 letter, an Office hearing representative informed appellant that the hearing would be held in Indianapolis, Indiana. On January 24, 2007 appellant requested a review of the written record instead of an oral hearing. He also submitted two undated statements and a June 10, 2006 report from Dr. DeFries.

In a May 2, 2006 report, Dr. James Goris, a Board-certified orthopedic surgeon, noted appellant's complaint of bilateral knee pain. He also noted that appellant had difficulty continuing to work as a mail carrier secondary to knee pain. Dr. Goris' examination revealed that appellant was substantially overweight and his knees had small effusion. He diagnosed bilateral knee osteoarthritis in an obese gentleman. Dr. Goris indicated that the cause of appellant's osteoarthritis included weight, possible genetic and potential aggravation from work. He advised that symptoms would be aggravated by performing mail carrier work and might hasten deformity because carrying additional weight from the letters and mailbag increased stress to the knee. Dr. Goris advised that appellant could seek treatment on an as-needed basis. In an August 16, 2006 work status form, he diagnosed permanent knee osteoarthritis. Dr. Goris noted that appellant could return to work with restrictions, but did not list any restrictions.

By decision dated April 9, 2007, an Office hearing representative affirmed the April 8, 2006 decision, finding the medical evidence insufficient to prove that appellant's job caused or aggravated bilateral knee osteoarthritis.

In a March 8, 2008 letter, appellant requested reconsideration. He objected to the manner in which the hearing representative handled his case, the delay in responding to his hearing request and the decision to not hold a hearing in Evansville, Indiana. Appellant asserted that the

medical opinions of his three treating physicians, Drs. Rang, DeFries and Goris, were sufficient to establish a causal relationship between his condition and his job duties as no opposing evidence existed.

Appellant also submitted another August 16, 2006 work status form from Dr. Goris, which indicated that appellant was incapacitated between October 3, 2005 and May 2, 2006. Dr. Goris diagnosed permanent knee osteoarthritis. He noted that appellant could return to work with restrictions on August 16, 2006. Dr. Goris did not list any restrictions. In a January 23, 2008 duty status report, Form CA-17, he diagnosed knee osteoarthritis. Dr. Goris also indicated that appellant could return to work on May 2, 2006 within listed restrictions.

By decision dated May 15, 2008, the Office denied appellant's request for reconsideration without a merit review. It found that the medical evidence submitted upon reconsideration was irrelevant, cumulative and of no evidentiary value to warrant review of its April 9, 2007 decision.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>1</sup> 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), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>2</sup>

### **ANALYSIS**

In his reconsideration request, appellant asserted that the Office hearing representative mishandled his claim, improperly delayed responding to his hearing request and should have held an oral hearing in Evansville, Indiana. He also alleged that the hearing representative showed bias against him and that the medical evidence was sufficient to establish his claim. The issue before the hearing representative was medical in nature; whether the medical evidence established that appellant's osteoarthritis of both knees was causally related to his factors of employment. The Board has carefully reviewed the hearing representative's decision and is not persuaded by appellant's arguments. The hearing representative correctly understood the issue to be decided and explained the basis of his decision. The record fails to establish bias. Furthermore, Office regulations provide that the hearing representative "retains complete discretion to set the time and place of the hearing."<sup>3</sup> Appellant's unsupported assertions are insufficient to establish that the Office erroneously applied or interpreted a specific point of law

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<sup>1</sup> 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB \_\_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>2</sup> 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2265, issued April 28, 2008).

<sup>3</sup> 20 C.F.R. § 10.617(a).

nor do they advance a relevant legal argument not previously considered by the Office. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>4</sup> The Board finds that appellant's arguments concerning the hearing representative lack a "reasonable color of validity" and fails to meet any of the requirements for reopening a case for a merit review under the Office's regulations.

Appellant also submitted medical evidence in support of his reconsideration request. Dr. Goris' August 16, 2006 work status form is essentially duplicative of another August 16, 2006 form signed by Dr. Goris. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>5</sup> The January 23, 2008 duty status form is not relevant as it does not address the issue of whether appellant's diagnosed osteoarthritis was caused or aggravated by his employment duties. Consequently, this medical evidence is insufficient to warrant reopening of appellant's claim for a merit review.

The Office properly denied appellant's reconsideration request as appellant did not submit evidence or argument satisfying at least one of the three regulatory requirements for obtaining a merit review of his claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration without a merit review.

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<sup>4</sup> *M.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-1189, issued September 20, 2007).

<sup>5</sup> *Roger W. Robinson*, 54 ECAB 846 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated May 15, 2008 is affirmed.

Issued: May 13, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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