

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fairfield, OH, Employer**

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**Docket No. 10-1081
Issued: December 14, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from a November 9, 2009 decision of the Office of Workers' Compensation Programs denying his request for reconsideration without a merit review. Pursuant to 20 C.F.R. §§ 501.2 and 501.3(c), the Board has jurisdiction over this decision. Because more than one year elapsed between the most recent merit Office decision of September 16, 2008, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.¹

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without a merit review.

¹ For final adverse Office decisions issued prior to November 19, 2008, a claimant has up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2) (2007). For final adverse decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On June 2, 2008 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that he sustained sore and locking knees and numbness in the left foot as a result of walking daily on uneven ground and up and down steps. He first became aware of his condition on or about May 19, 2008. Appellant did not stop working. Submitted with his claim was a June 2, 2008 work ability report from Dr. Matthew A. Langenderfer, a Board-certified orthopedic surgeon, advising that appellant could return to work without restrictions.

In a July 2, 2008 letter, the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him of the evidence needed to establish his claim.

In a June 2, 2008 report, Dr. Langenderfer reviewed x-rays of the knees, observed “moderate lateral tilt on sunrise views” and diagnosed bilateral compression syndrome. He noted that appellant walked between six and eight hours a day in his job. Appellant also provided Dr. Langenderfer’s June 30, 2008 report, in which he complained of aching discomfort in both knees with intermittent sharp pain in the left knee, particularly when walking his postal route. Dr. Langenderfer reviewed an x-ray of appellant’s lumbosacral spine and found significant L5-S1 degenerative disc disease. He concluded that appellant sustained bilateral patella femoral compression syndrome.

By decision dated September 16, 2008, the Office denied appellant’s claim, finding that Dr. Langenderfer’s reports did not provide sufficient medical opinion regarding how appellant’s diagnosed knee condition was caused by work factors.

Thereafter, appellant submitted various medical records. In an August 28, 2008 report, Dr. Langenderfer noted that appellant continued to experience discomfort in both knees, more in his left than right, especially behind the kneecaps when descending steps. He added that appellant walked between eight to nine miles a day and that his symptoms “increased after working.” Dr. Langenderfer stated that the pain was related to bilateral patella femoral compression syndrome. In a November 18, 2008 report, he detailed marked improvement in appellant’s right knee and subsisting pain on the inside aspect and in front of his left knee. Dr. Langenderfer diagnosed chondromalacia patella and pes anserine bursitis. In a December 23, 2008 report, he noted appellant’s complaints of soreness across the front and outside of his left knee, which worsened while bending, squatting and stair climbing. Dr. Langenderfer’s findings were consistent with lateral patella femoral compression syndrome and a torn lateral meniscus. A December 29, 2008 magnetic resonance imaging (MRI) scan report from Dr. Anthony P. Antonoplos, a Board-certified diagnostic radiologist, revealed an increased signal identified within patellar tendon in the left knee, suggestive of patellar tendinosis.

In a January 5, 2009 report, Dr. Langenderfer noted that appellant presented with persistent left knee pain. He advised that appellant was doing well prior to returning to his route but currently had increased pain and swelling in the left knee. Dr. Langenderfer stated that, after a few hours, appellant could not walk or climb stairs. He stated that an MRI scan was consistent with patella tendinosis and chondromalacia patella. Dr. Langenderfer recommended left knee diagnostic arthroscopy with chondroplasty.

In a May 11, 2009 surgical report, Dr. Langenderfer performed a left knee arthroscopy with chondroplasty. He stated that appellant was a mail carrier and typically walked 10 miles a day. Dr. Langenderfer noted that appellant could not recall a specific history of trauma but reported increasing left knee pain with ambulation. Appellant reported difficulty climbing stairs and walking for long periods of time. He also provided June 9 and July 23, 2009 postoperative status reports from Dr. Langenderfer.

Appellant requested reconsideration on September 14, 2009, asserting that Dr. Langenderfer still supported that his knee condition was employment related.

By decision dated November 9, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant review of the prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that the evidence or argument submitted by a claimant must either (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.³ Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

The Office's September 16, 2008 merit decision denied appellant's claim on the grounds that the medical evidence did not establish that his claimed knee condition was causally related to his federal employment. Appellant requested reconsideration on November 9, 2009 and asserted that Dr. Langenderfer supported his claim. The underlying issue is medical in nature and his general assertion regarding his physician's reports does not show that the Office erroneously applied or interpreted a specific point of law and it did not advance a relevant legal argument not previously considered by the Office.

Appellant submitted on reconsideration new evidence from Dr. Langenderfer. Dr. Langenderfer's August 28, 2008 report noted that appellant walked between eight and nine miles a day and sustained knee discomfort after working or when descending steps. His December 23, 2008 report added that appellant's left knee soreness worsened while bending, squatting and stair climbing. Dr. Langenderfer's January 5, 2009 report remarked that appellant's left knee had been doing well prior to returning to his delivery route, after which he experienced increased pain and swelling. In the May 11, 2009 operative report, he noted that

² 5 U.S.C. § 8128(a). *See generally* 5 U.S.C. §§ 8101-8193.

³ *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

⁴ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

appellant was employed as a mail carrier, walked 10 miles on a typical day and sustained left knee pain with ambulation, emphasizing difficulty climbing stairs and walking for long periods of time. Although these reports mentioned that appellant had left knee pain after walking and stair climbing, none actually offered a specific opinion from Dr. Langenderfer supporting that a work activity caused or aggravated a diagnosed medical condition. Since Dr. Langenderfer did not specifically address whether there is a causal relationship between work activities and a claimed condition, these reports are not relevant and not sufficient to warrant a merit review of the claim.

Appellant's other new medical evidence, Dr. Langenderfer's November 18, 2008 report, his postoperative reports from June and July 2009 and the December 29, 2008 MRI scan report, also are not relevant because they do not support that appellant's work activities caused or aggravated a claimed condition.

Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or constitute relevant and pertinent new evidence, he is not entitled to a review of the merits of his claim.

On appeal, appellant disagrees with the Office's September 16, 2008 decision, reiterates that his job requires six to eight hours of walking each day on various surfaces and steps and posits that his knee condition would not have occurred if the job required little to no walking. The Board does not have jurisdiction over the September 16, 2008 merit decision. It only has jurisdiction to consider whether the Office properly denied a merit review of the claim based on the evidence that was before the Office at the time it issued its October 15, 2009 decision. As explained, appellant did not submit any evidence or argument in support of his reconsideration request that warranted reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).⁵

CONCLUSION

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

⁵ The Board notes that appellant submitted new medical evidence on appeal. The Board may not consider this evidence on appeal as its review of a case is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2010
Washington, DC

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

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

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