

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 15, 2010 appellant, then a 31-year-old transportation security screener, filed a traumatic injury claim alleging that on the same day he was lifting a bag off of a belt when he stood up and heard a “pop” in his left knee. He stopped work.²

A January 16, 2010 magnetic resonance imaging (MRI) scan of the left knee revealed complete disruption of the anterior cruciate ligament, indeterminate in age and complex tear of the posterior horn of the medial meniscus. In a February 2, 2010 report, Dr. John E. Zvijac, a Board-certified orthopedist, treated appellant for a left knee injury. Appellant reported that he was at work lifting a heavy bag and twisted and subsequently felt a “pop” and had severe pain and swelling in his left knee. Dr. Zvijac diagnosed torn left anterior cruciate ligament, medial and lateral meniscal tears by MRI scan and recommended surgery. In a duty status report of the same date he noted that appellant was totally disabled from work.

By letter dated February 10, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It particularly requested that he submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted an incident report dated January 15, 2010 and a February 25, 2010 statement, which indicated that between 8:50 a.m. to 9:00 a.m. he was lifting a bag and when he stood up to place the bag on the carousel he heard and felt a pop in his left knee and experienced pain and swelling. He submitted a February 22, 2010 report from Dr. Zvijac who noted that appellant related all of his injuries to the January 15, 2010 injury at work. Dr. Zvijac opined that appellant’s history and clinical examination were consistent with an acute injury on January 15, 2010. He noted that the MRI scan report indicated that the age of the anterior cruciate ligament tear was indeterminate and he could only go with appellant’s history of injury and clinical examination which suggested that the injury occurred on January 15, 2010. Appellant submitted a statement from Roselie Pierre, a coworker, who indicated that she was working with him on January 15, 2010 when he injured his leg. Ms. Pierre noted that he was unloading and checking alarm bags when he suddenly stopped and stated that he hurt his knee.

On February 25, 2010 the employing establishment controverted the claim alleging that appellant was viewed on a closed circuit television on the day of the injury as limping and favoring the left knee prior to the time he was alleged to have injured his knee. Also submitted was a report from Dr. David M. Sack, a Board-certified physiatrist and employing establishment physician, who reviewed appellant’s file and opined that the severity of his left knee injury was out of proportion to the described mechanism of injury. He indicated that a simple lift of a bag would not be enough to cause appellant’s left knee injury.

² Appellant filed a claim for a lumbar strain occurring on February 24, 2005, claim number xxxxxx736; a claim for a lumbar strain sustained on June 11, 2005, claim number xxxxxx651; a claim for a lumbar strain occurring on March 23, 2006 claim number xxxxxx044; and a claim for a lumbar strain occurring on July 10, 2009, claim number xxxxxx454. These claims are not before the Board on this appeal.

In a March 24, 2010 decision, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant submitted a request for surgery and his employer challenged the claim, his claim would be formally adjudicated. It denied his claim finding that the evidence did not establish that he sustained a work-related injury.

On April 1, 2010 appellant requested an oral hearing which was held on July 9, 2010. He submitted a statement reiterating the history of his work incident. Also submitted was an April 2, 2010 operative report from Dr. Zvijac who performed a diagnostic arthroscopy of the left knee, left anterior cruciate ligament reconstruction, partial medial and lateral meniscectomy and synovectomy. He diagnosed torn left anterior cruciate ligament, medial and lateral meniscal tears and synovitis.

In a decision dated October 1, 2010, an OWCP hearing representative affirmed the March 24, 2010 decision, finding that the medical evidence was insufficient to establish that appellant's condition was due to the January 15, 2010 incident.

On January 13, 2011 appellant requested reconsideration. On March 29, 2011 he through his representative requested a status on his claim. Appellant submitted an October 22, 2010 report from Dr. Zvijac who noted treating appellant two weeks after he sustained an injury on January 15, 2010 while at work. He reported lifting a heavy bag and twisting his left knee when he felt a pop and had severe pain and swelling. Dr. Zvijac noted that appellant denied any prior injury to the left knee. He opined that, based on his history, physical examination and MRI scan, appellant's torn anterior cruciate ligament and medial and lateral meniscus tears were acute in nature and causally related to his job duties and the injury on January 15, 2010.

In a decision April 22, 2011, OWCP denied appellant's reconsideration request finding that the request was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

³ 5 U.S.C. § 8128(a).

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

OWCP’s most recent merit decision of October 1, 2010, found that appellant had not established his claim because the medical evidence was insufficient to establish that his condition was due to the January 15, 2010 incident. On April 22, 2011 it denied his January 13, 2011 reconsideration request, without a merit review and he appealed this decision to the Board.

As noted above, the Board does not have jurisdiction over the October 1, 2010 OWCP decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his January 13, 2011 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered by OWCP.⁶ Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant submitted an October 22, 2010 report from Dr. Zvijac who treated appellant two weeks after he sustained an injury on January 15, 2010 while at work. He reported lifting a heavy bag and twisting his left knee when he felt a pop and had severe pain and swelling. Dr. Zvijac opined that, based on his history, physical examination and MRI scan, appellant’s torn anterior cruciate ligament and medial and lateral meniscus tears were acute in nature and causally related to his job duties and the injury on January 15, 2010. Although this report is new, it is not relevant because it is similar to his notes dated February 2 and 22, 2010 previously of record and previously considered by OWCP and found to be insufficient. Therefore, OWCP properly determined that this evidence was cumulative and did not constitute a basis for reopening the case for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

⁶ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

On appeal, appellant through his representative, submitted a brief with exhibits and asserted that he sustained a work-related left knee injury on January 15, 2010 while lifting a heavy bag. The Board notes, however, that it only has jurisdiction over whether OWCP properly denied a merit review of the claim. As explained, appellant did not submit evidence or argument in support of his reconsideration request that warrants reopening of his claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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