

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 25, 2009 appellant filed a claim alleging a recurrence of disability on February 11, 2009. She experienced right knee pain while walking on the workroom floor. Appellant indicated that her condition stemmed from a November 27, 2007 work injury under claim number xxxxxx176.² OWCP determined that she attributed her condition to additional work duties on a single day, February 11, 2009, and that it would adjudicate the claim as a new traumatic injury.

By decision dated April 10, 2009, OWCP denied the claim on the grounds that appellant did not establish an injury as alleged. It found that the medical evidence did not establish that the claimed medical condition was related to the established work-related events.

On April 21, 2009 appellant requested a hearing, which was held on August 18, 2009. At the hearing, her representative argued that the previous claim was accepted for a contusion of the right knee and right knee sprain and strain. He argued that the claims should be combined to avoid confusion.

By decision dated September 30, 2009, an OWCP hearing representative affirmed the April 10, 2009 decision.

In an August 17, 2009 report, Dr. William Colman, a Board-certified orthopedic surgeon, referenced a 2007 workers' compensation injury and advised that appellant related injuring her right knee almost two years prior. He diagnosed chronic regional pain syndrome of the right knee. In an August 24, 2009 report, Dr. Samant Virk, an orthopedic surgeon, noted treating appellant in follow-up of chronic regional pain syndrome in the right knee. He noted that she wanted the condition covered by workers' compensation.

On November 9, 2009 appellant requested reconsideration.

By decision dated December 17, 2009, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request did not raise any substantial legal questions or include new and relevant evidence and was insufficient to warrant further merit review.

On July 13, 2010 appellant requested reconsideration. She submitted additional evidence which included a May 13, 2010 prescription for a cane and a May 13, 2010 work restriction note from Dr. Virk. Also submitted was a May 13, 2010 partially legible duty status report, Form CA-17, from Dr. Virk which diagnosed right knee pain and set for work restrictions.

By decision dated September 27, 2010, OWCP denied appellant's request for reconsideration without merit review on the grounds that her request neither raised substantial legal questions nor included new and relevant evidence.

² The Board notes that claim number xxxxxx176 is not before the Board on the present appeal.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP may reopen a case for review on the merits 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 if the written application for reconsideration, including all supporting documents, sets forth arguments and contains 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) 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

Appellant disagreed with OWCP’s September 30, 2009 decision, which affirmed the denial of her claim as the medical evidence was insufficient to establish her claimed right knee condition as causally related to the February 11, 2009 work incident. The underlying issue on reconsideration is medical in nature, whether she sustained an injury causally related to her work on February 11, 2009.

In the July 13, 2010 request for reconsideration, appellant submitted additional evidence from Dr. Virk which included a May 13, 2010 prescription for a cane and a note that her work restrictions were unchanged. This evidence is not relevant to the underlying issue because Dr. Virk did not address whether her right knee condition was caused or aggravated by her work activity on February 11, 2009. Appellant also provided a partially legible copy of a May 13, 2010 CA-17 form from Dr. Virk; but this report is also not relevant. Dr. Virk again failed to address whether her work on February 11, 2009 caused or aggravated the right knee condition. While new to the record, the reports are not relevant because they do not address causal relationship.

Appellant’s reconsideration request also did not allege that OWCP erroneously applied or interpreted a specific point of law and she did not advance a relevant legal argument not previously considered by OWCP. Because she did not meet any of the regulatory criteria to

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b).

⁵ *Id.*

warrant a reopening of the case for further merit review, the Board finds that OWCP properly declined to reopen the case.

On appeal, appellant noted that OWCP denied her claim based on three items in her reconsideration request. She explained that she had submitted additional new medical documentation from her physicians, which was placed in her other claim file instead of the present claim. Appellant attached those reports and a copy of her certified mail number. However, the Board has no jurisdiction to review this evidence for the first time on appeal.⁶

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2011
Washington, DC

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

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

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

⁶ *Id.* at § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).