United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 07-1317**
	)	**Issued: October 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Whitestone, NY, Employer	)	

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 April 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 19, 2006 denying her traumatic injury claim and its March 14, 2007 nonmerit decision denying her 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 traumatic injury while in the performance of duty on November 15, 2004; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 28, 2006 appellant, a 53-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2004 she tore her left meniscus while going up to a

second step to deliver mail. The official supervisor's report reflected that she did not stop working until March 31, 2006, when she first reported that alleged incident to her supervisor.[1]

In an undated statement, appellant indicated that, when she fell on November 15, 2004, she did not immediately realize that she was seriously injured. She alleged that, when she reported the accident to her supervisor three days later, she was told that it was too late to report the incident.

On April 20, 2006 the employing establishment challenged the claim, contending that appellant did not allege that her condition was job related until her insurance company refused to cover the costs of her treatment. In a statement dated April 10, 2006, Francisco Ortiz, supervisor of customer service for the employing establishment, indicated that appellant "never" reported that she hurt herself on November 15, 2004, but rather told him that she sustained an "off-the-job injury." He stated that, after undergoing left knee surgery in February 2005, she returned to light duty in May 2005 and stopped working on March 31, 2006. Mr. Ortiz indicated that, on April 14, 2006 appellant told him that, on November 15, 2004, she had tripped at 160-45 Willets Point Boulevard at approximately 11:30 a.m., but had been afraid to report the incident at that time.

In a statement dated April 20, 2006, station manager John Zucchi indicated that, on April 14, 2006, appellant informed him that she wanted to claim a November 15, 2004 injury, because her insurance would not cover the cost of a magnetic resonance imaging (MRI) scan. Appellant explained that she had not notified management earlier of her injury because she was "scared."

In support of her claim, appellant submitted a December 10, 2004 radiograph of her knees, which provided an impression of mild degenerative osteoarthritis of the lateral joint compartment of the left knee. A January 11, 2005 report of an MRI scan of the left knee revealed a degenerative tear of the posterior horn and body lateral meniscus; radial tear of the body medial meniscus; and moderate degenerative osteoarthritis lateral femorotibial compartment. The record contains February 1, 2005 presurgical instructions from New York Hospital, Queens and February 2, 2005 postoperative discharge instructions.

Appellant submitted reports from Dr. Walter A. Besser, a Board-certified orthopedic surgeon. On January 18, 2005 Dr. Besser stated that appellant had sustained an injury to her left knee, resulting in torn medial and lateral menisci and osteoarthritis of the lateral compartment of the left knee joint, which required surgery. In notes dated April 1 and 20, 2005, he stated that, following arthroscopy of the left knee, appellant was able to return to light duty. In duty status reports dated September 6 and December 6, 2005, Dr. Besser indicated that appellant could work with restrictions.

In a note dated March 23, 2005, Dr. Richard Dauhajre, a Board-certified physiatrist, opined that appellant would require physical therapy for an additional eight weeks prior to returning to work. Appellant submitted a March 28, 2006 duty status report from Dr. Gai-Fu

[1] The Board notes that although appellant's signature on the CA-1 form is dated April 28, 2006, it was received by the Office on April 20, 2006.

William Yang, a Board-certified physiatrist, who stated that she tore her left meniscus on November 15, 2004, when she fell while delivering mail. Dr. Yang indicated that he had examined appellant on March 28, 2006.

Appellant submitted notes and reports from Dr. Shi-Cheng Chiang, a Board-certified physiatrist. In disability slips dated April 1 and 15, 2006, he stated that appellant had undergone a left knee arthroscopy on February 2, 2005 and was unable to work due to left knee pain. The record also contains Dr. Chiang's April 15, 2006 prescription for physical therapy and an illegible duty status report dated April 23, 2005.

On April 27, 2006 the Office notified appellant that the evidence submitted was insufficient to establish her claim. Appellant was advised to provide additional documentation, including a firm diagnosis and a physician's opinion as to how the alleged November 15, 2004 incident resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred; statements from any witnesses or other documentation supporting her claim; and the reason she delayed reporting the incident.

In a statement dated April 21, 2006, appellant indicated that she was in distress and was nervous and confused when she submitted her first report; that she delayed in reporting the incident because she did not "notice" that her injury was very serious and thought it would heal at work; and that she did not know she was required to fill out a CA-1. On April 26, 2006 the employing establishment refuted appellant's allegation that she was nervous and confused when she provided her original statement.

Appellant submitted hospital records and an operative report dated February 2, 2005 from Dr. Besser, reflecting that he performed an arthroscopy of the left knee; partial lateral and medial meniscectomies; abrasion chondroplasty of the patellofemoral joint compartment of the knee; and synovectomy of the three compartments of the knee joint. In an initial pain assessment, appellant stated that she had experienced pain since November 15, 2004. In an April 17, 2005 duty status report, Dr. Chiang opined that appellant was able to work four hours per day with restrictions. He noted that the date of injury was November 15, 2004. Appellant submitted physical therapy progress notes and treatment notes for the period February 21, 2005 to March 27, 2006. Notes dated November 9, 2005, bearing an illegible signature, reflect appellant's report that she experienced left knee pain after a November 15, 2004 fall. Notes dated April 15, 2006, also bearing an illegible signature, reflected appellant's report that she had experienced pain in her left knee for some time without a recent injury.

In a May 1, 2006 statement, appellant provided details of the alleged November 15, 2004 incident. She reported that at 11:20 a.m. on the date in question, while she was carrying "a lot of mail," she fell forward on the second step at 160-45 Willets Point Boulevard, injuring both knees, especially the left; when she checked her knees, she noticed a gash and a bruise; when a pedestrian passed by and asked if she was "O.K.," appellant allegedly said that she was "fine;" she rested on the steps for 7 to 10 minutes; though she felt a lot of pain, she forced herself to continue her route; after finishing her route, she returned to her van for a Band-Aid for her knee; and near the end of her route, she met a coworker, Tin Wai Tse, to whom she allegedly reported the accident. Appellant stated that she was afraid to inform her boss of the incident immediately and when she finally reported it to him on November 17, 2004, due to increased pain, he

informed her that it was too late to report the event and that she had to continue her route regardless of her injury. She stated that she filed a traumatic injury claim after discovering that she had a torn meniscus and talking with a union representative. Appellant also indicated that she was unable to locate the witness. In a May 2, 2006 statement, she indicated that, on November 17, 2004, she informed her supervisor, Eddie Rivera, that she fell while on duty. Appellant further stated that after she received the results of the January 11, 2005 MRI scan, she reported the details of the November 15, 2004 incident to Mr. Ortiz and informed him that she required surgery.

Appellant submitted a May 1, 2006 witness statement from a coworker, Mr. Tse, who stated that in mid-November 2004, he had previously arranged to help appellant deliver mail on her route. When Mr. Tse met appellant near the end of her route, she was limping and appeared to be in pain. Appellant allegedly told Mr. Tse that she had fallen to her knees onto the steps of Willets Point Boulevard while delivering mail that morning, that "her knees were hurting and that she was in too much pain to finish her route." When Mr. Tse offered to help appellant finish her route, she declined his assistance. He stated that he did not mention the incident to anyone at the employing establishment.

Appellant submitted a report dated April 26, 2006 from Dr. William C. Wang, a treating physician, who stated that appellant injured her left knee on November 15, 2004, when she fell down during a mail delivery. Dr. Wang indicated that she first visited his office on November 22, 2004, stating that she was having difficulty climbing stairs due to knee pain. His physical examination at that time revealed a small open wound in the left knee and mild swelling. Dr. Wang found limited range of motion in left knee flexion. McMurray's test was positive in the left knee. Lachman's and anterior drawer tests were negative. Strength was 5-/5 in the left leg. Sensation was normal. DTR was 2+ throughout. The diagnosis at that time was left knee injury, ruling out meniscus tear. Dr. Wang noted that a January 11, 2005 MRI scan of the left knee revealed a degenerative tear of the posterior horn and body lateral meniscus; radial tear body medial meniscus; moderate degenerative osteoarthritis; and lateral femorotibial compartment. In a May 12, 2006 disability slip, he indicated that appellant was unable to work for two weeks due to left knee pain. On May 13, 2006 Dr. Wang stated that appellant sustained a left knee injury at work on November 15, 2004. He recommended light-duty work for three months. On May 23, 2006 Dr. Wang opined that appellant could return to light-duty work. In a May 22, 2006 "Medical Justification for Light Duty," he restricted appellant from lifting more than 25 pounds; reaching above the shoulder for more than 6 hours; pushing or pulling for more than 5 hours; and walking for more than 2.5 hours.

On May 19, 2006 Dr. Besser diagnosed post-traumatic chondromalacia patella of the left knee. He related appellant's report that she had fallen as she was climbing steps on November 15, 2004, while delivering mail. The record contains disability slips from Drs. Chiang and Yang for the period April 1 to 29, 2006 and physical therapy notes dated November 9, 2005.

In a merit decision dated June 15, 2006, the Office denied appellant's claim, finding that the evidence was insufficient to establish that appellant had sustained an injury on November 15, 2004. The Office concluded that the medical evidence failed to establish a causal relationship between appellant's diagnosed condition and the claimed event.

On July 12, 2006 appellant requested reconsideration. She alleged that she never told anyone that her injury was not work related; that she informed coworkers of the November 15, 2004 incident; and that she was not informed of her rights under the Federal Employees' Compensation Act when she reported the incident.

Appellant submitted a July 7, 2006 report from Dr. Besser, who reported appellant's claim that she fell on stairs while at work delivering mail, sustaining an injury to her right and left knee. Dr. Besser diagnosed post left knee arthroscopy and status post work-related injury to left knee. He stated: "I feel that the accident at work is a competent and aggravating cause of the injury to her left knee." In an August 18, 2006 letter, Dr. Besser repeated the history of injury and diagnosed post-traumatic chondromalacia patella of the left knee. Appellant also submitted copies of previously submitted medical reports.

In an August 11, 2006 statement, Bobbie Soloman of the employing establishment noted that appellant alleged that her injury was job related only after discovering that her insurance would not pay for certain treatment. He noted that appellant was seen twice by employing establishment medical doctors and each time she stated that her condition was not job related. Mr. Solomon provided a copy of an April 25, 2005 authorization for medical attention form, which was completed by appellant, her supervisor and a physician, whose signature is illegible. Both appellant and her supervisor indicated in their designated sections that the identified illness or injury, "left knee surgery," was not job related.

By decision dated September 19, 2006, the Office modified its June 15, 2006 decision to reflect that the fact of injury was not established, as the evidence did not substantiate that the claimed event occurred as alleged.

On October 12, 2006 appellant requested reconsideration, reiterating her claims that she notified her coworkers of the November 15, 2004 incident; that she failed to report the incident within 24 hours because she did not believe she was seriously injured; and that she told her supervisors about her pain, but they would not file a report. In a letter dated October 8, 2006, she stated that she was submitting evidence regarding the accusation of requesting light duty for a nonwork-related condition. Appellant submitted a copy of a May 11, 2006 letter to the employing establishment, expressing her desire to participate in the job bidding process. She stated that she had injured her left knee in mid-November 2004 and hoped to be able to work full duty within six months. Appellant also submitted a copy of a May 20, 2006 light-duty application; a May 29, 2006 letter from appellant to the employing establishment regarding the status of her request for light duty; an October 1, 2006 return-to-work slip from Dr. David Y. Zhang, a Board-certified cytopathologist; letters dated October 3 and November 17, 2006 from Dr. Besser, who reiterated his belief that appellant sustained a work-related injury to her left knee on November 15, 2004; and copies of previously-submitted medical documents.

On March 14, 2007 the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted was immaterial or irrelevant and, therefore, insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

The Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that

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[2] 5 U.S.C. § 8101 *et seq.*

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004); *see also Betty J. Smith*, 54 ECAB 174 (2002); *Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

[7] *See Betty J. Smith, supra* note 6.

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10]

ANALYSIS -- ISSUE 1

On September 19, 2006 the Office found that the evidence did not substantiate that the claimed event occurred as alleged. The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury to her left knee on November 15, 2004.

Appellant noted on her April 28, 2006 CA-1 form that she tore her left meniscus while going up to a second step to deliver mail. In her initial report, she provided no detailed account of the incident, which allegedly occurred 16 months prior to the filing of the claim. Subsequently, appellant stated that at 11:20 a.m. on the date in question, while she was carrying "a lot of mail," she fell forward on the second step at 160-45 Willets Point Boulevard, injuring both knees, especially the left; that she noticed a gash and a bruise on her knees; that a pedestrian passed by and asked if she was "O.K;" and that she rested on the steps for 7 to 10 minutes. Her recitation of the facts is not supported by the evidence of record and does not establish her allegation that a specific event occurred which caused an injury.[11] Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

Appellant's allegation that she reported a November 15, 2004 work-related injury to the employing establishment contemporaneously with the alleged incident is not consistent with the surrounding facts and circumstances of this case. She claimed to have reported the incident to her supervisor, Mr. Rivera, on November 17, 2004 and to Mr. Ortiz on January 11, 2005. However, Mr. Ortiz denied appellant's allegation, stating that she told him that she sustained an "off-the-job" injury. He indicated that appellant did not claim to have sustained an injury on November 15, 2004 until April 14, 2006. The employing establishment controverted appellant's claim, noting that she did not allege that her injury was job related until she discovered that her insurance would not pay for certain treatment. In an April 25, 2005 authorization for medical attention form, both appellant and her supervisor indicated in their designated sections that the identified illness or injury, "left knee surgery," was not job related.

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Dennis M. Mascarenas*, *supra* note 9.

The difficulty with appellant's claim lies in the paucity of medical evidence contemporaneous with the alleged November 14, 2005 incident. Such evidence constitutes the most reliable substantiation that an injury did, in fact, occur as alleged,[12] particularly, as here, where appellant waited over a year to file her claim.[13] There are no contemporaneous medical reports of record reflecting that appellant was treated for a knee injury on or around November 15, 2004. The earliest report submitted was a December 10, 2004 radiograph, which provided an impression of mild degenerative osteoarthritis of the lateral joint compartment of the left knee. A January 11, 2005 report of an MRI scan of the left knee revealed a degenerative tear of the posterior horn and body lateral meniscus; radial tear of the body medial meniscus; and moderate degenerative osteoarthritis lateral femoroibial compartment. Neither report reflected a traumatic injury to the knee; rather, both reports reflected a degenerative condition. On January 18, 2005 Dr. Besser stated that appellant had sustained an injury to her left knee, resulting in torn medial and lateral menisci and osteoarthritis of the lateral compartment of the left knee joint, which required surgery. However, he did not provide any details regarding where, when or how the injury occurred. Dr. Besser's February 2, 2005 operative report and related hospital records indicate that appellant underwent an arthroscopy of the left knee; partial lateral and medical meniscectomies; abrasion chondroplasty of the patellofemoral joint compartment of the knee; and synovectomy of the three compartments of the knee joint. An initial pain assessment reflected appellant's claim that she had experienced pain since November 15, 2004. However, these records do not contain a history of injury indicating that appellant fell while delivering mail on November 15, 2004.

Medical reports submitted substantially after the alleged incident are insufficient to establish that the event occurred as alleged on November 15, 2004. On April 17, 2005 Dr. Chiang identified November 15, 2004 as the date of injury. He did not describe, however, how or where the injury occurred; nor did he indicate whether it was work related. On March 28, 2006 Dr. Yang stated that appellant tore her left meniscus on November 15, 2004, when she fell while delivering mail. On May 19 and July 7, 2006 Dr. Besser related appellant's report that she had fallen as she was climbing steps on November 15, 2004, while delivering mail. These reports, written more than a year after the alleged incident, do not confirm that the incident occurred. They do not contain a detailed history of the incident or description of a resulting injury, which would support a physician's knowledge of the facts surrounding the incident.

On April 26, 2006 Dr. Wang stated that appellant injured her left knee on November 15, 2004, when she fell down during a mail delivery. He indicated that she was having difficulty climbing stairs due to knee pain when she first visited his office on November 22, 2004. Dr. Wang provided findings of his physical examination of appellant at that time; however, he did not provide a contemporaneous report or copies of his notes relating to the November 22, 2004 office visit.[14] He noted that a January 11, 2005 MRI scan of the left knee revealed a

[12] *Glen Warren Denessen*, 26 ECAB 299 (1975).

[13] *See Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[14] The Board has held that contemporaneous evidence is entitled to greater weight than later evidence. *See Eileen R. Kates*, 46 ECAB 573 (1995); *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur M. Meyers*, 23 ECAB 111 (1971).

degenerative tear of the posterior horn and body lateral meniscus; radial tear body medial meniscus; moderate degenerative osteoarthritis; and lateral femorotibial compartment. But Dr. Wang did not attempt to explain how the alleged November 15, 2004 incident caused appellant's condition. On May 13, 2006 he again stated, without explanation, that appellant sustained a left knee injury at work on November 15, 2004. Dr. Wang's reports are not inconsistent with the history of injury provided by appellant. However, these reports, submitted 17 months after the alleged incident, are insufficient to establish that appellant sustained a work-related injury on November 15, 2004.

The witness statement provided by appellant is also insufficient to establish the fact of injury. Mr. Tse stated that in mid-November 2004, when he met appellant near the end of her route, she was limping and appeared to be in pain. Appellant allegedly told Mr. Tse that she had fallen on her knees onto the steps of Willets Point Boulevard while delivering mail that morning, that "her knees were hurting and that she was in too much pain to continue her route." Mr. Tse was unable to recall the exact date of the alleged incident, which he admittedly did not witness. He also acknowledged that he did not mention the incident to anyone at the employing establishment. Mr. Tse's statement does not establish that appellant fell on her knees at the time, place and in the manner alleged.

The Board finds that appellant has failed to establish the fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged or that the alleged incident caused her condition. As appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty, it is not necessary to discuss the probative value of the medical reports.[15]

LEGAL PRECEDENT -- ISSUE 2

The Act[16] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[17]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[18]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If

[15] *Id.*

[16] 5 U.S.C. § 8101 *et seq.*

[17] 20 C.F.R. § 10.605.

[18] *Id*. at § 10.606.

reconsideration is granted, the case is reopened and the case is reviewed on its merits.[19] Where the request is timely but 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.[20]

ANALYSIS -- ISSUE 2

Appellant's October 12, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant merely reiterated her earlier contentions. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

Appellant also failed to submit relevant and pertinent new evidence not previously considered by the Office. The Office denied appellant's claim on the grounds that the fact of injury was not established, as the evidence did not substantiate that the claimed event occurred as alleged. However, the evidence submitted in support of appellant's request for reconsideration was either duplicative or irrelevant to the issue at hand.

Appellant submitted a copy of a May 11, 2006 letter to the employing establishment, expressing her desire to participate in the job bidding process, and indicating that she had injured her left knee in mid-November 2004 and hoped to be able to work full duty within six months. She also submitted a copy of a May 20, 2006 light-duty application, reflecting her allegation that she sustained a work-related injury on November 15, 2004 and a follow-up letter to the employing establishment, dated May 29, 2006, regarding the status of her request for light duty. Appellant provided letters dated October 3 and November 17, 2006 from Dr. Besser, who repeated his statement that appellant sustained a work-related injury to her left knee on November 15, 2004. These documents merely reiterated information regarding the circumstances surrounding the alleged injury. The Board notes that similar information was considered prior to the issuance of the Office's September 19, 2006 decision. Appellant also submitted copies of medical documents, which were previously considered by the Office. Material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim[21] and does not constitute a basis for reopening a case.[22] Appellant also submitted an October 1, 2006 return-to-work slip from Dr. Zhang. This document is not relevant to the issue decided by the Office, namely whether appellant established that the incident occurred at the time, place and in the manner alleged. This type of information is *prima facie* insufficient to warrant merit review.

[19] *Donna L. Shahin*, 55 ECAB 192 (2003).

[20] 20 C.F.R. § 10.608.

[21] *Lawrence Ellis Myers*, 27 ECAB 262 (1976).

[22] *Richard L. Byrd*, 25 ECAB 353 (1974).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her October 12, 2006 request for reconsideration.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury to her left knee in the performance of duty on November 15, 2004. The Board further finds that the Office properly refused to reopen appellant's claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 14, 2007 and September 19, 2006 are affirmed.

Issued: October 5, 2007
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