

¹ For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

On appeal, appellant, through his attorney, contends that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

On January 23, 2008 appellant, then a 42-year-old truck driver, filed an occupational disease claim alleging that he sustained an injury to his right knee as a result of repeated pushing, pulling, climbing and walking during the performance of his federal duties. On April 4, 2008 the Office accepted his claim for aggravation of localized primary osteoarthritis of the right leg.

Appellant returned to full-duty work with restrictions. He accepted a limited-duty job offer on August 8, 2008. Appellant filed claims for recurrences of disability from August 12 through September 18, 2008 and September 22 through December 1, 2008. He contended that the limited-duty position offered by the employing establishment was outside of his physical restrictions. On February 18, 2008 appellant listed his limitations, noted that he had been medicating himself and alleged that his disability was related to his federal employment. In a January 17, 2008 note, Dr. Robert L. Highhouse, an attending Board-certified orthopedic surgeon, listed his impression as severe right knee osteoarthritis and noted that appellant would benefit from a less laborious job that would allow for some occasional walking and some standing. In subsequent reports through August 4, 2008, he reiterated appellant's employment restrictions. Dr. Highhouse noted permanent restrictions of limited walking and standing, no lifting over 40 pounds, minimal squatting/climbing and no work with the upper extremities. On September 8, 2008 he reiterated that appellant had severe arthritis, varus alignment and that it would benefit appellant if he could occasionally walk but not walk or climb continuously as it would aggravate his condition.

In a December 17, 2008 decision, the Office denied appellant's recurrence claims, as the medical evidence was not sufficient to establish that he was unable to perform restricted-duty work or establish a material worsening of the accepted condition.

By letter dated September 7, 2009, appellant, through his attorney, requested reconsideration, contending that the request was filed within "one year of September 17, 2008." Appellant's attorney stated that this appeal was based on a letter from appellant dated February 18, 2008 and the report of Dr. Highhouse dated January 17, 2008. In a September 22, 2009 letter to appellant, the Office noted that appellant's attorney did not specify the decision date that was being appealed and advised that no further action would be taken until a decision date was clearly indicated. On October 13, 2009 counsel noted that appellant was appealing from the Office's December 17, 2008 decision.

By decision dated October 21, 2009, the Office denied appellant's request for reconsideration without reviewing the merits of the case.

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: (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 To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

In a December 17, 2008 decision, the Office denied appellant's claims for a recurrence of disability. As noted, the merits of this decision are not before the Board as more than 180 days elapsed between the December 17, 2008 decision and the filing of appellant's appeal on November 9, 2009. The only issue before the Board is whether the Office properly denied appellant's reconsideration request.

In requesting reconsideration, appellant did not contend that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. Counsel submitted appellant's statement dated February 18, 2008 and the January 17, 2008 report of Dr. Highhouse. Both of these items were already of record and considered by the Office in the issuance of the December 17, 2008 decision. Duplicative evidence does not warrant a reopening a case for further merit review.⁶ Furthermore, appellant did not submit any pertinent new evidence to support that he sustained a recurrence of disability after the issuance of the December 17, 2008 merit decision.⁷

The Board finds that appellant did not meet any of the standards of 20 C.F.R. § 10.606(b)(2). Accordingly, the Office properly denied his application for reconsideration without further review of the merits of the claim.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ See *L.H.*, 59 ECAB ____ (Docket No. 07-1191, issued December 10, 2007); *James E. Norris*, 52 ECAB 93 (2000).

⁷ See *E.M.*, 60 ECAB ____ (Docket No. 09-39, issued March 3, 2009) (where the Board held that new evidence submitted upon a reconsideration request that does not address the pertinent issue is not relevant evidence).

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration without further merit review of the claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2009 is affirmed.

Issued: August 16, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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