

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 16, 2010 appellant, then a 54-year-old part-time flexible carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left leg in the performance of duty on September 9, 2010. He submitted a statement dated September 16, 2010 alleging that on September 9, 2010 he was assigned a “relay run” and he felt pain and stiffness behind his left knee. In a November 2, 2010 statement, appellant indicated that performing relays consisted of handling and moving bags and buckets of mail, weighing 30 to 50 pounds, in and out of trucks.

The medical evidence submitted included a September 23, 2010 report from Dr. Stephen Zaretsky, an orthopedic surgeon, who provided results on examination and diagnosed possible internal derangement of the left knee. By decision dated November 29, 2010, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

On December 21, 2010 appellant requested a review of the written record by an OWCP hearing representative. He submitted an October 14, 2010 report from Dr. Zaretsky, stating that appellant’s findings were consistent with a tear of the posterior horn of the left meniscus, as well as degenerative osteoarthritis. In a report dated November 5, 2010, Dr. Zaretsky provided results on examination and opined that appellant was disabled.

By decision dated March 30, 2011, the hearing representative affirmed the denial of the claim for compensation. The hearing representative found that the medical evidence did not establish a left knee condition causally related to the employment incidents.

In a letter dated March 12, 2012, appellant, through his representative, requested reconsideration. The representative cited Board case law with respect to burden of proof and the medical evidence necessary to establish a claim for compensation and argued that he had submitted sufficient evidence to establish the claim. Appellant resubmitted the September 23, October 14 and November 5, 2010 reports from Dr. Zaretsky.

By decision dated June 18, 2012, OWCP determined that the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP’s regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: “(1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP.”³ Section

² *Id.* at § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

³ 20 C.F.R. § 10.606(b)(2).

10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

In the present case, appellant submitted an application for reconsideration dated March 20, 2012. He did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. The application for reconsideration noted that a claimant has the burden of proof to submit rationalized medical evidence. Appellant argued that he believed the medical evidence was rationalized medical evidence on causal relationship. A claimant's disagreement with OWCP's findings on the probative value of the medical evidence does not in itself constitute a new and relevant legal argument.⁵

The claim for compensation was denied on the grounds that the medical evidence was insufficient on the issue of causal relationship between a diagnosed left knee condition and the employment incidents on September 9, 2010. Appellant did not submit any new and relevant evidence on the medical issue. The medical evidence submitted on reconsideration consisted of the previously submitted reports from Dr. Zaretsky dated September 23, October 14 and November 5, 2010.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 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 by OWCP. The Board finds that OWCP properly determined the application for reconsideration was insufficient to warrant merit review of the claim.

On appeal, appellant's representative argued that appellant had met his burden of proof to establish an injury in the performance of duty. As noted, the only issue before the Board is whether appellant met one of the requirements of 20 C.F.R. § 10.606(b)(2) to reopen the case for review of the merits of the claim for compensation. For the reasons stated, the Board finds that OWCP properly declined to reopen the case for merit review.

CONCLUSION

The Board finds that OWCP properly determined that appellant's application for reconsideration was insufficient to warrant merit review of the claim.

⁴ *Id.* at § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

⁵ *See S.D.*, Docket No. 10-993 (issued December 6, 2010); *James O. Johnson*, Docket No. 01-1090 (issued April 9, 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2012 is affirmed.

Issued: May 10, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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