

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RAYMOND A. NICKLIN and U.S. POSTAL SERVICE,  
POST OFFICE, ORMOND BEACH, FL

*Docket No. 00-1851; Submitted on the Record;  
Issued July 10, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further consideration of the merits pursuant to 5 U.S.C. § 8128.

On December 1, 1989 appellant, then a 36-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained acute laceration, synovitis and osteoarthritis of the left knee related to his federal employment. The Office accepted his claim for left medial meniscus tear and on February 4, 1992, granted appellant an award under the schedule for a five percent permanent impairment of the left lower extremity. He disagreed with this decision and numerous appeals followed. In the most recent hearing representative decision, dated January 13, 1998, the hearing representative found that appellant had not established his entitlement to benefits after April 17, 1992 and therefore affirmed the Office's earlier decision of September 4, 1996. In making this determination, the hearing representative noted that Dr. Willis G. Stose, a Board-certified orthopedic surgeon, who was appointed by the Office to resolve the conflict in evidence, provided a well-rationalized opinion that the medical evidence failed to substantiate the existence of a meniscal tear until January 5, 1995 and that this tear was not causally related to the 1989 employment injury. The hearing representative noted that there was no medical opinion evidence sufficient to overcome the well-reasoned opinion of Dr. Stose.

By letter received by the Office on January 19, 1999, appellant requested reconsideration. In support thereof, he alleged that Dr. Stose did not provide medical rationale for his conclusions. In further support of reconsideration, appellant submitted unsigned office notes of Dr. J. Richard Rhodes, a Board-certified orthopedic surgeon, dated January 8, 1992 and January 21, 1994. He also submitted an unsigned February 20, 1996 note from the Florida Arthritis and Allergy Institute, which indicated that appellant suffers from stage two degenerative joint disease. Finally, appellant submitted a medical report dated April 2, 1998 by Dr. Herbert Kaufer, a Board-certified orthopedic surgeon, wherein he indicated that he observed "definite, mild degenerative arthritis of the left knee as evidence by measurable atrophy of the

left thigh and radiographic changes with the left knee characteristic of degenerative arthritis.” He noted that appellant’s current diagnosis was post-traumatic degenerative arthritis of the left knee and that if appellant were to return to his work activities, he would expect him to experience increased discomfort in the left knee.

By decision dated January 13, 2000, the Office denied reconsideration as it found that the evidence submitted in support of the request for review was of a cumulative or a repetitious nature and was not sufficient to warrant review of its prior decision.

The Board’s jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.<sup>1</sup> Since appellant filed his appeal on April 19, 2000, the only decision over which the Board has jurisdiction on this appeal is the January 13, 2000 decision denying appellant’s request for reconsideration on the merits.<sup>2</sup>

The Board finds that the refusal of the Office to reopen appellant’s case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,<sup>3</sup> the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that: (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.<sup>4</sup> Section 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 the Office without review of the merits of the claim.

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. The statements made by Dr. Rhodes and by Florida Arthritis and Allergy Institute are unsigned and therefore do not constitute probative medical evidence.<sup>5</sup> Furthermore, the medial reports of Dr. Rhodes were duplicative of those already in the record. The only new and signed evidence is the report of Dr. Kaufer. However, Dr. Kaufer does not provide a rationalized medical opinion on the issue of whether appellant’s disability and knee condition is causally related to his work-related injury. Appellant’s contention that the opinion of Dr. Stose was not well rationalized had already been considered and rejected by the hearing representative.

---

<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB \_\_\_\_\_ (Docket No. 99-1345, issued November 3, 2000).

<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> See *Diane Williams*, 47 ECAB 613, 616 (1996).

Therefore, appellant has not established that the Office abused its discretion in denying appellant's request for a review on the merits under section 8128(a) of the Act.

The decision of the Office of Workers' Compensation Programs dated January 13, 2000 is affirmed.

Dated, Washington, DC  
July 10, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member