

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS M. BRYD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Washington, DC

*Docket No. 02-997; Submitted on the Record;
Issued December 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied merit review of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On June 3, 1985 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for an injury sustained to his right knee while bending over and removing a tray of mail.¹ The Office accepted the claim for traumatic synovitis right knee. On July 16, 1990 appellant was issued a schedule award for a 34 percent permanent impairment of the right knee.

On September 14 and October 15, 2000 appellant filed claims for compensation (Form CA-7) for the period September 14 through October 6, 2000.

In an October 9, 2000 attending physician's report (Form CA-20), Dr. Peter S. Trent, an attending Board-certified orthopedic surgeon, diagnosed right knee strain and sprain and stated appellant was totally disabled for the period September 14 through November 2, 2000 and partially disabled for the period October 5, 1995 through September 15, 2000. The physician checked "yes" that the right knee strain and sprain was caused or aggravated by appellant's employment.

On November 9, 2000 appellant filed a Form CA-7 for compensation for the period September 14 through November 30, 2000.

On December 11, 2000 appellant filed a Form CA-7 compensation for the period November 30, 2000 through January 11, 2001.

By decision dated January 16, 2001, the Office denied appellant's claim for a recurrence of disability.

¹ This was assigned claim number A25-296609. The Office accepted a wrist injury under claim number A25-340812. Appellant noted claim number A25-0503443 with March 24, 1997 as the date of injury.

Appellant filed Forms CA-7 for compensation for the period January 11 through June 28, 2001.

Appellant requested reconsideration by letter dated October 19, 2001. In support of his request, he stated that he failed to “understand how the determination of a nonrecurrence can cure an accepted injury with a 34 percent *permanent* partial impairment.” (Emphasis in the original.) He also argued that Dr. Trent’s CA-20 forms were sufficient as the physician noted the date of injury as June 3, 1985.

On January 23, 2002 the Office received a September 20, 2001 report by Dr. Trent. In his report, Dr. Trent indicated that he had treated appellant since 1995 for his 1985 employment-related right knee injury. He noted that appellant continued to have pain in his right knee and he “requested an MRI [magnetic resonance imaging], but we have not been able to get authorization for this.” Regarding the cause of appellant’s knee problems, Dr. Trent opined:

“The patient does not, upon close questioning, have any history of an intercurrent injury or any other injury to the right knee in the intervening period since the original Workman’s Compensation-related injury. Therefore, with a reasonable degree of medical certainty, the patient’s current complaint of symptoms in his right knee is causally related to the accident in 1985. The exact nature of the injury at the present time has not been fully diagnosed because of our inability to get an authorization for an MRI, which would be the best test necessary in order to fully evaluate this. The patient still complains of pain, which is activity-related and since I have been treating him, he has had several episodes of locking and giving way which points toward a meniscal injury, but this could not be further diagnosed without getting an MRI.”

By decision dated February 22, 2002, the Office denied appellant’s request for review of the merits of the case after finding that he failed to submit any new evidence in support of the request for review insufficient to warrant a merit review of the prior decision.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed his appeal with the Board on March 12, 2002, the Board lacks jurisdiction to review the Office’s most recent merit decision dated January 16, 2001. Consequently, the only decision properly before the Board is the Office’s February 22, 2002 decision denying appellant’s request for reconsideration.

The Board finds that the Office improperly denied merit review of appellant’s request for reconsideration pursuant to 5 U.S.C. § 8128(a).

The Code of Federal Regulations implementing 5 U.S.C. § 8128 provides that a claimant may obtain review of the merits of the claim if the application: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent

² 20 C.F.R. §§ 501.2(c), 501.3(d)(2) (1998) and 20 C.F.R. § 10.607(a) (1999).

evidence not previously considered by the Office.³ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴

In denying appellant's request for reconsideration, the Office found that appellant had submitted no evidence. A review of the record indicates that the Office received a September 20, 2001 report by Dr. Trent on January 23, 2001. The merit issue in this case concerned whether appellant's recurrence was causally related to his approved injury. On reconsideration, appellant submitted a medical opinion by Dr. Trent, wherein he indicated that appellant's knee problems were related to his accepted work injury. Furthermore, Dr. Trent noted that appellant's complaints of knee pain were activity related. This report is relevant to the pertinent issue.

The requirements for reopening a claim for merit review do not include the requirement that a claimant submit all evidence necessary to discharge his burden of proof. If the Office should determine that the new evidence submitted lacks substantive probative value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.⁵ Section 10.606(b) only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁶ Accordingly, the Board finds that the Office improperly denied appellant's October 19, 2001 request for reconsideration.

The decision of the Office of Workers' Compensation Programs dated February 22, 2002 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
December 11, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ 20 C.F.R. § 10.608(b) (1999).

⁴ *Id.*

⁵ *Paul Kovash*, 49 ECAB 350, 354 (1998).

⁶ 20 C.F.R. § 10.606(b)(2)(ii).