

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK BENCKER and U.S. POSTAL SERVICE,  
POST OFFICE, Omaha, NE

*Docket No. 03-1002; Submitted on the Record;  
Issued August 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration under 5 U.S.C. § 8128(a).

On August 20, 1990 appellant, then a 63-year-old retired letter carrier, filed a claim for occupational disease alleging that he suffered from degenerative arthritis in both knees due to walking and standing in the performance of duty. The record indicates that he stopped work on February 26, 1990 and retired effective April 20, 1990.<sup>1</sup>

The Office denied appellant's claim on December 7, 1990 on the grounds that the medical evidence of record was insufficient to establish a causal relationship between his work factors after May 13, 1987 and his bilateral knee condition. Although appellant filed numerous reconsideration requests, the Office denied modification in decisions dated April 15 and October 16, 1991,<sup>2</sup> January 17 and June 24, 1992, September 11, 1995 and March 3, 1997.

In a March 8, 2000 decision, the Board vacated the Office's March 3, 1997 merit decision,<sup>3</sup> finding that appellant had submitted *prima facie* evidence to support that his bilateral knee condition was due to work factors. The Board directed the Office to further develop the medical record by sending appellant for a second opinion evaluation with a Board-certified specialist. The Board's decision along with its discussion of the medical evidence is incorporated herein.

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<sup>1</sup> Appellant has filed numerous workers' compensation claims. The Office previously approved a claim for right knee strain filed by appellant in relation to a December 14, 1984 slip and fall injury at work. He also filed an occupational disease claim on May 13, 1997 for degenerative arthritis of both knees due to his work duties as a letter carrier. The Office, however, rejected that claim on December 2, 1987.

<sup>2</sup> *Frank A. Bencker*, Docket No. 98-469 (issued March 8, 2000).

<sup>3</sup> *Id.*

On remand, the Office referred appellant, along with a statement of accepted facts and a copy of the medical record to Dr. Lonnie Mercier, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated May 3, 2000, he stated that there did not appear to be a causal relationship between appellant's right knee condition and factors of his federal employment.

In a decision dated May 10, 2000, the Office denied appellant's claim for compensation on the grounds that the weight of the evidence resting with Dr. Mercier's opinion, established that appellant's bilateral knee condition was not causally related to work factors. On May 27, 2000 appellant requested a hearing. In a decision dated October 4, 2000, an Office hearing representative vacated the Office's May 10, 2000 decision, finding Dr. Mercier's opinion to be speculative and insufficiently reasoned to carry the weight of the evidence. In an October 19, 2000 letter, the Office requested clarification of his causation opinion. In a supplemental report dated October 26, 2000, Dr. Mercier noted that "[appellant's] condition would indeed have progressed to the extent that it did require surgery regardless of his work activities." In a November 2, 2000 decision, the Office once again denied compensation. Following an oral hearing, an Office hearing representative affirmed the Office's May 10 and November 2, 2000 decisions denying compensation.

On September 17, 2002 appellant requested reconsideration. In support of his reconsideration request, he submitted the following evidence: copies of detailed earnings reports, an article entitled, "Oral hearings and reviews of the written record Part three," copies of a calendar for the months of January through April showing when he worked overtime or took annual or sick leave, a copy of guidelines for requesting light duty, duplicative documentation and informational letters from the Office regarding appellant's CA-2 claim and duplicate copies of medical reports dated May 30 and August 6, 1986, July 27, 1987, April 22, 1993, July 8, 1996 and January 17, 2001 from various physicians.

In a decision dated December 10, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant or duplicative.

The Board finds that the Office properly denied appellant's reconsideration request under 5 U.S.C. § 8128.

Section 8128(a) of the Federal Employees' Compensation Act<sup>4</sup> vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.<sup>5</sup> The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> When an application for review of the merits of a claim does not meet at least one of these three

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*; *see* 8128(a).

<sup>5</sup> *See Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2) (1999).

requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>8</sup> Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.<sup>9</sup>

In this case, appellant submitted in support of his reconsideration request, a large quantity of medical evidence that was already of record. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.<sup>10</sup> Similarly, although appellant submitted copies of his detailed earnings reports, an article regarding oral hearings, documents pertaining to his light duty and information letters from the Office, that evidence does not satisfy the requirements of section 8128. This evidence on reconsideration is not relevant to the issue of the case, which is whether appellant suffers from degenerative arthritis in both knees due to work factors. The documentation presented by appellant on reconsideration is not relevant medical evidence addressing the causal relationship between his diagnosed condition and his federal employment.<sup>11</sup> Insofar as appellant has failed to submit evidence that satisfies the requirements of section 8128(a), the Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration on the merits.

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<sup>7</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>8</sup> *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

<sup>9</sup> *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

<sup>10</sup> *Alton L. Vann*, 48 ECAB 259 (1996).

<sup>11</sup> See *Linda I. Sprague*, 48 ECAB 386. (Evidence that does not address the particular issue involved does not constitute a basis for reopening a case).

The decision of the Office of Workers' Compensation Programs dated December 10, 2002 is hereby affirmed.

Dated, Washington, DC  
August 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member