

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA L. SHORT and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, Sweet Home, OR

*Docket No. 03-1972; Submitted on the Record;  
Issued October 15, 2003*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On June 18, 1986 appellant, then a 31-year-old forester, filed a notice of traumatic injury alleging that she was injured on that day when she hopped off a log and landed on a rock that rolled underneath her foot, causing her to twist her right knee. The Office accepted the claim for a right medial collateral ligament (MCL) strain. Appellant did not miss any work due to her work injury. She was assigned a light-duty desk job and underwent six weeks of physical therapy. She then returned to full duty.

On July 11, 2001 appellant filed a claim alleging that she sustained a recurrence of disability beginning May 26, 2001. She noted in a personal statement dated July 10, 2001 that she had stepped on a root on May 26, 2001 and her right knee gave out. She attributed her knee condition to the original work injury of June 18, 1986, stating that her knee had never been the same since the MCL strain.

In a decision dated October 12, 2001, the Office denied compensation on the grounds that the evidence was insufficient to establish that appellant's alleged recurrence of disability on or after May 26, 2001 was causally related to the right MCL strain she sustained on June 18, 1986. Appellant subsequently requested reconsideration and submitted additional evidence. On February 27, 2002 the Office denied modification of its prior decision.

In a February 24, 2003 letter, appellant again requested reconsideration and outlined the medical treatment she had received for her right knee from January through May 2002. She also submitted a form entitled "Physical Evidence," on which the word "photograph" was circled and a handwritten notation of "arthroscopy of [right] knee" was included. In a decision dated May 12, 2003, the Office denied appellant's request for reconsideration, finding that the evidence submitted in support of the request was of an immaterial nature, and therefore insufficient to warrant a merit review of the case.

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.<sup>1</sup> As appellant filed her appeal with the Board on August 5, 2003, the Board lacks jurisdiction to review the Office's merit decisions dated October 12, 2001 and February 27, 2002, which denied appellant's claim for a recurrence of disability on May 26, 2001 as causally related to her accepted work injury of June 18, 1986. The Board may only consider the Office decision dated May 12, 2003 which denied appellant's request for reconsideration.

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>2</sup> The new Office regulations were made effective January 4, 1999<sup>3</sup> and further address this discretionary authority. Section 10.606(b) of the Office regulations provides that an application for reconsideration must be in writing, set forth arguments and contain evidence 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> When an application for reconsideration is timely filed<sup>5</sup> but does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>6</sup>

On reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law, so she is unable to satisfy the requirement of section 10.606(b)(1). Appellant likewise did not advance a relevant legal argument not previously considered by the Office. Consequently, she did not satisfy the requirement of section 10.606(b)(2).

Although appellant submitted a copy of six photographic views of her arthroscopic knee surgery, the Board notes that this evidence does not constitute a medical opinion or report addressing whether or not she sustained a recurrence of disability. The evidence does not address the primary issue of causal relationship and is not relevant to her claim of a recurrence of disability. The Board finds that the Office properly deemed appellant's evidence on reconsideration to be immaterial with respect to section 10.606(b)(3). Because appellant failed to satisfy the requirements of section 10.606(b), the Office properly found that she was not entitled to have her case reopened for further merit review under section 8128.

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2); *see Gregory Apicos*, 51 ECAB 272 (2000).

<sup>2</sup> 5 U.S.C. § 8128.

<sup>3</sup> 63 Fed. Reg. 227 (1998).

<sup>4</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>5</sup> An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. *See* 20 C.F.R. § 10.607(a) (1999).

<sup>6</sup> 20 C.F.R. § 10.608(b) (1999).

The decision of the Office of Workers' Compensation Programs dated May 12, 2003 is hereby affirmed.

Dated, Washington, DC  
October 15, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member