

**United States Department of Labor
Employees' Compensation Appeals Board**

JEFF GRESHAM, Appellant

and

**DEPARTMENT OF THE AIR FORCE, HILL
AIR FORCE BASE, Salt Lake City, UT,
Employer**

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**Docket No. 04-1279
Issued: November 29, 2004**

Appearances:

*Randall G. Phillips, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 15, 2004 appellant appealed from a January 15, 2004 decision of the Office of Workers' Compensation Programs which denied his request for reconsideration of its October 21, 2002 decision. Because more than one year has elapsed between the last merit review of October 21, 2002 and the filing of this appeal on April 15, 2004 the Board lacks jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

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

FACTUAL HISTORY

On September 3, 2002 appellant, then a 43-year-old missile transporter, filed a traumatic injury claim indicating that on October 31, 2000 he was climbing up into a semi-tractor-trailer

when he stepped outside of the cab, missed the outside step and twisted both knees. He grabbed the hand rail of the truck to keep from falling to the ground. In a statement accompanying the claim form, appellant indicated that on July 25, 2002 he reinjured his left knee at work while he was inspecting a U-Haul trailer. He began using his right knee more due to the employment incident to compensate for his left knee. A month after the incident, he sought medical attention for pain to both knees.¹

In a September 18, 2002 report, Dr. Donald W. Bryan, a Board-certified orthopedic surgeon, indicated that appellant was seen for evaluation of pain in his right knee. He noted that appellant sustained a tear of the medial meniscus of the right knee in November 1991 and underwent a partial medial meniscectomy on the right side. Dr. Bryan reported that the right knee had been working well until the past year when appellant had more trouble with his left knee, which put strain on the right knee to the point that both knees bothered him. Appellant had severe pain and effusion and swelling of the knee and a feeling of catching on the left knee. Dr. Bryan stated that an examination showed that the collateral ligaments were stable in both knees. He found marked tenderness to palpation over the medial joint space of the right knee with grinding and crepitus in flexion and extension. Dr. Bryan found no tenderness laterally and only minimal grinding of the patellofemoral joint. He stated that x-rays revealed complete loss of joint space involving both knees in the medial compartment with genu varum of about five degrees. Dr. Bryan indicated that the patellofemoral joint was within normal limits. He diagnosed advanced osteoarthritis involving the medial compartment of both knees aggravated by the recent injuries.

In a September 18, 2002 letter, the Office requested additional information from appellant and allowed him 30 days to submit the information.

In an October 21, 2002 decision, the Office denied appellant's claim because he had not submitted any medical evidence that established a causal relationship between his employment incident and his medical condition.²

Subsequent to the decision, the Office received appellant's medical records relating to his bilateral knee condition extending back to July 25, 1988. Appellant also submitted a copy of Dr. Bryan's September 18, 2002 report. In an undated letter, received by the Office on August 15, 2003, appellant claimed that he was waiting for a decision on his claim. He stated that he met with the personnel division of the employing establishment on June 17, 2003 where he was shown the October 21, 2002 decision. Appellant reviewed the history of his injuries to

¹ The Office has not issued a final decision on appellant's claim for the July 25, 2002 incident. That incident, therefore, will not be considered on this appeal because the Board has jurisdiction only over adverse final decisions issued by the Office. 20 C.F.R. §§ 501.3(a) and 501.2(c), respectively.

² The decision was mailed to appellant at his address of record, 2168 W. 56505, Roy, Utah, 84067. Appellant contended that he did not receive the Office's October 21, 2002 decision. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. The presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed. Appellant has not submitted any evidence to rebut the presumption other than his own account. His account, by itself, is insufficient to show that the Office failed to send him the October 21, 2002 decision. *Denis R. Dupor*, 51 ECAB 482, 487 (2000).

his knees and his duties at the employing establishment, stating the physical requirements of his duties had a heavy impact on his knees. He requested reconsideration of his claim or a hearing.

In a September 2, 2003 letter, the Office asked appellant to clarify whether he wanted reconsideration of his case or a hearing. In an October 17, 2003 letter, appellant's attorney requested reconsideration.

In a January 15, 2004 decision, the Office denied appellant's request for reconsideration because his request did not raise substantive legal question nor included pertinent new and relevant evidence.

LEGAL PRECEDENT

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, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a relevant legal argument not previously considered by the Office or submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim 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.³ 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.⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁵

ANALYSIS

Appellant's request for reconsideration was filed on October 17, 2003 within a year of the October 21, 2002 decision. However, the only evidence submitted by appellant after the decision were his medical records, which did not contain any statement addressing how his bilateral knee condition was causally related to his employment. He also submitted a copy of Dr. Bryan's report, which stated that appellant's osteoarthritis was aggravated by his recent injuries. Appellant did not submit any legal arguments on behalf of his request for reconsideration. Dr. Bryan's report is duplicative of medical evidence submitted before the Office's October 21, 2002 decision and which was previously considered by the Office. Since appellant did not submit any relevant and pertinent new evidence or legal argument not previously considered by the Office in support of his request for reconsideration, the Office properly denied his request for reconsideration.

³ 20 C.F.R. 10.608(b).

⁴ See *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁵ See *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

CONCLUSION

The Office properly denied appellant's request for reconsideration because he did not submit any relevant and pertinent medical evidence or legal arguments in support of his request.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated January 15, 2004, be affirmed.

Issued: November 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member