

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

DANIEL B. CASON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 04-2234
Issued: February 11, 2005**

Appearance:
Daniel B. Cason, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 13, 2004 denial of reconsideration and July 28, 2004 merit denial of his claim for recurrence of disability. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability as of May 12, 2004 causally related to his accepted left knee condition; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 43-year-old letter carrier, injured his left knee on April 26, 2000 when he leaped into the back of a pickup truck trying to avoid a pit bull. He filed a claim for benefits on April 27, 2000, which the Office accepted for left knee sprain. Appellant received compensation benefits for intermittent disability through September 29, 2000.

On May 21, 2004 appellant filed a Form CA-7 claim for compensation, requesting compensation for the period May 12 to 14, 2004. The Office treated the claim as one for recurrence of disability. Appellant subsequently submitted four additional Form CA-7 claims covering the period May 15 to July 2004.

On May 26, 2004 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on March 12, 2004 which was causally related to his accepted condition.

Appellant submitted an April 5, 2004 report from Dr. Alan F. Kenney, a Board-certified family practitioner, who stated that appellant had chronic, increasing knee and lower leg pain. Dr. Kenney stated:

“[Appellant’s] work restrictions are currently limited to walking under six hours a day, but even this is becoming more difficult for him to do. In my opinion, he needs to be reassigned to a different area within [the employing establishment] to accommodate this restriction. [Appellant] is willing to see an outside physician for an additional opinion of necessary. Please expedite [appellant’s] request for reassignment of work duties within [the employing establishment] that will minimize his chronic pain symptoms.”

By letter dated June 4, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits based on a recurrence of disability. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition as of May 12, 2004 was causally related to his April 26, 2000 employment injury. Appellant did not submit any additional medical evidence.

By decision dated July 28, 2004, the Office denied appellant compensation for a recurrence of his accepted left knee condition. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of May 12, 2004 which was caused or aggravated by the accepted conditions.

On August 2, 2004 appellant requested reconsideration. Appellant submitted a July 26, 2004 report from Dr. Pedro Nosnik, Board-certified in internal medicine, who stated findings of a significant meniscal tear on the left as shown by magnetic resonance imaging (MRI) scan. He also stated that there was a maceration of the medial meniscus and an oblique tear. Dr. Nosnik related complaints of persistent discomfort in both knees despite taking anti-inflammatory medication. He recommended orthopedic consultation.

By decision dated August 13, 2004, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.¹

ANALYSIS -- ISSUE 1

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of May 12, 2004 to his accepted left knee condition. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment condition.

In support of his recurrence claim, appellant submitted Dr. Kenney's April 5, 2004 report, which noted appellant's complaints of chronic and increasing knee and lower leg pain and outlined work restrictions. These work restrictions included no walking for more than six hours a day, but he related that even this limited walking was becoming increasingly difficult due to his knee pain. Dr. Kenney recommended that appellant be reassigned to a different work area in order to accommodate this restriction and minimize his chronic pain symptoms. His report, however, does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related condition and his alleged recurrence of disability on May 12, 2004. Causal relationship must be established by rationalized medical opinion evidence. Dr. Kenney's report, the only evidence appellant submitted in support of his claim for a recurrence of disability, failed to provide a rationalized, probative medical opinion indicating that his condition as of May 12, 2004 was caused or aggravated by his accepted left knee condition.²

As there is no medical evidence addressing and explaining why the claimed condition and disability as of May 12, 2004 was caused or aggravated by his accepted employment condition, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.³ Evidence that repeats

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *William C. Thomas*, 45 ECAB 591 (1994).

³ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. The July 26, 2004 report from Dr. Nosnik addressed findings on examination and stated that an MRI scan indicated that appellant had a significant meniscal tear on the left, in addition to maceration of the medial meniscus and an oblique tear. He also stated that appellant had persistent discomfort in both knees despite taking anti-inflammatory medication. The report, however, did not address the relevant issue of causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.⁶

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of May 12, 2004 causally related to his accepted left knee condition. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

⁶ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.6(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 13 and July 28, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member