

strain and found that he was entitled to continuation of pay for the two days -- March 13 and 14, 1995 he missed from work.

On February 8, 2002 appellant filed a claim for a recurrence of disability related to his March 12, 1995 employment injury, but did not list a date of recurrence or work stoppage. He stated that his knee buckled. On June 13, 2002 appellant filed a claim for a recurrence of medical treatment related to his March 12, 1995 employment injury, listing the date of the recurrence and of the first medical treatment following the recurrence as April 29, 2001. Appellant stated that his right knee buckled frequently and hurt all the time and listed April 29, 2001, January 3 and February 8, 2002 as dates his knee buckled. On November 1, 2002 he filed a claim for a recurrence of disability related to his March 12, 1995 employment injury, listing August 16, 2002 as the date of the recurrence and his stoppage of work as August 19 to September 19, 2002.

In support of these claims for recurrences, appellant submitted numerous medical reports from Dr. Gary R. Stevens, an osteopath. In an April 3, 2001 report, he stated that "it appears that his ongoing problem presently is a SI [sacroiliac] inflammation that causes some of the leg pain and perhaps even the knee to buckle." In a June 14, 2001 report, Dr. Stevens noted that appellant had had an episode where his knees buckled twice and in a January 28, 2002 note, he stated "Please reopen case for R[ight] knee." On June 27, 2002 Dr. Stevens listed diagnoses of a torn medial meniscus and internal derangement of the right knee. In an August 9, 2002 report, he indicated that appellant's right knee condition was more likely than not related to use of ladders, operating heavy equipment and walking on concrete in his employment. In an August 20, 2002 report, Dr. Stevens stated that appellant's right knee gave out on August 16, 2002 at work causing him to fall. A September 30, 2002 magnetic resonance imaging (MRI) scan of his right knee showed a tear of the medial meniscus, a strain involving the lateral collateral ligament and chondromalacia of the lateral patellar facet. In an October 4, 2002 report, Dr. Stevens recommended arthroscopic surgery on appellant's right knee and stated, "This right knee injury that we're preparing to operate is related to a claim on the right knee of March 12, 1995 and I feel this is more likely than not related to the injury described at that time."

By decision dated October 28, 2002, the Office found that appellant did not sustain an injury on August 16, 2002 and advised him that he could pursue the August 16, 2002 fall as an injury consequential to his March 12, 1995 employment injury. Appellant's representative then contended that the August 16, 2002 injury was a consequential injury. On December 12, 2002 the Office advised appellant that, if he believed his right knee condition was related to his March 12, 1995 employment injury he should provide a factual statement and a medical report explaining why.

By decision dated February 14, 2003, the Office found that the medical evidence did not establish that appellant's claimed recurrences on April 29, 2001, February 8 and August 16, 2002 were causally related to his March 12, 1995 employment injury.

Appellant submitted reports from Dr. Stevens dated October 31, 2002 to March 24, 2003 and copies of reports from him previously submitted. The October 31, 2002 report concerned appellant's left knee, a November 8, 2002 report noted bilateral knee pain, back pain and shoulder pain and stated that appellant should not be working, a February 12, 2003 report

showed bilateral sacroiliac injections and a March 24, 2003 report addressed bilateral hand and wrist pain. A December 9, 2002 report indicated that appellant's multiple medical problems and the nature of his job made working difficult. Another December 9, 2002 report stated: "Right knee pain continues with swelling. It's not a new injury. It is a continued problem."

By letter dated April 15, 2003, the Office advised appellant that, if he disagreed with its February 14, 2003 decision, he should follow the appeal rights that accompanied it. By letter dated December 17, 2003, his representative requested reconsideration of the Office's February 14, 2003 decision.

By decision dated January 13, 2004, the Office found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant merit review of his claim.

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:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), 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 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. 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.¹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.²

ANALYSIS

The reports from Dr. Stevens submitted on reconsideration which were copies of reports already in the record at the time of the Office's February 14, 2003 merit decision are not new evidence and do not constitute a basis for reopening appellant's case. Of the new reports

¹ *Eugene F. Butler*, 36 ECAB 393 (1984).

² *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

submitted on reconsideration Dr. Stevens' October 31, 2002 report concerned appellant's left knee, his February 12, 2003 report showed bilateral sacroiliac injections and his March 24, 2003 report addressed bilateral hand and wrist pain. These reports have no relevance to the Office's decision to deny appellant's claims for recurrences related to his March 12, 1995 right knee injury.

Dr. Stevens' November 8, 2002 report and one of his December 9, 2002 reports indicate that appellant is totally disabled due to multiple medical problems, including her knee problems. These reports are not relevant because they do not address the issue of whether appellant's right knee condition is related to her March 12, 1995 employment injury. Also not addressing this issue is Dr. Stevens' other December 9, 2002 report. Although this report states that appellant's right knee pain and swelling is "not a new injury" and is "a continued problem," it does not directly address whether his right knee condition is related to his March 12, 1995 injury. As the Office's merit decision found that appellant had not shown that his claimed recurrences were related to his March 12, 1995 injury, the evidence submitted by appellant on reconsideration is not relevant and, therefore, not sufficient to require the Office to reopen her case for further review of the merits of her claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member