

A note dated August 26, 2002 from Dr. Michael Pryce, a Board-certified orthopedic surgeon, reflected that appellant rescheduled an appointment from August 26 to 28, 2002 because he did not have adequate workers' compensation information for his claim.

In an August 19, 2002 return to work form, Dr. Anthony Pipitone, a Board-certified osteopath specializing in internal medicine, provided a diagnosis of "lumbar strain, left knee injury" and indicated that appellant was "totally disabled for work."

In an August 28, 2002 return to work certificate, Dr. C. Brown, a treating physician, indicated that appellant was seen for treatment of "confidential" and that his work should be limited to eight hours per day, seven days per week.

On September 16, 2002 the employing establishment controverted appellant's claim, contending that appellant could not designate what happened on the date of injury, where the injury happened or what caused it to occur.

In an August 19, 2002 report of x-rays of the lumbar spine and left knee, Dr. Manju Vijayargiya, a radiologist, opined that appellant had no abnormalities of the lumbar spine or left knee and probably had sacroiliitis.

In an August 19, 2002 "injury statement," appellant stated that he had notified management three months prior to filing his claim that he was experiencing pain behind his left knee. He continued to work without seeking medical attention because other carriers were on leave due to illness and because he believed his condition would "work itself out." According to appellant, his condition worsened.

On September 11, 2002 the Office notified appellant that the information submitted was insufficient to establish his claim, indicating that he had failed to establish that he actually experienced a specific employment incident that caused a diagnosed condition. The Office advised appellant to provide details as to where he was and what he was doing when the injury occurred, as well as a physician's report with a diagnosis and rationalized opinion as to the cause of his condition.

Appellant submitted an October 8, 2002 order for a magnetic resonance imaging (MRI) scan signed by Dr. Alexander Michael, a Board-certified orthopedic surgeon. In an unsigned report dated August 19, 2002, Dr. Pipitone noted that appellant complained of a three-month history of left knee and lower lumbar pain, but that he did not recall the specific time of injury. Appellant had reported that, after walking his five-mile route each day, his left knee became sore. Dr. Pipitone provided a diagnosis of "lumbar strain, left knee injury." He indicated that x-rays of the left knee and lumbar spine were normal. Dr. Pipitone's examination of appellant's lower extremities revealed a relatively stable left knee, with no evidence of effusion, laxity, patellar altar or patellar baja. Valgus and varus testing was negative. Drawer and Lachman's tests were negative.

By decision dated October 16, 2002, the Office denied appellant's claim, finding that his description of the alleged injury was too vague to establish the fact of injury due to employment factors. On September 3, 2003 the Office received a copy of its October 16, 2002 decision bearing the notation "must file recon[sideration]."

Appellant submitted an August 29, 2002 report from Dr. Brown reflecting that he had been seen for an August 19, 2002 work-related injury. Dr. Brown indicated that appellant “ha[d] ambiguous story of injury. No specific date. Worked with pain for days before being seen in hospital.” He provided an impression of “left knee pain – resolved.”

Appellant submitted duplicate records received by the Office prior to the issuance of the October 16, 2002 decision, including his narrative statement, x-ray reports, disability slips and medical reports. He submitted numerous reports from Dr. Michael, including an unsigned report dated October 3, 2002, in which he indicated that appellant sustained an April 14, 2002 work-related accident when he felt a snap or pop in his lower back while carrying a heavy mailbag. Dr. Michael reported that appellant gradually started having low back and leg pain. Physical findings revealed sciatic notch tenderness on the left side, positive straight leg raising on the left, and tenderness along the distal hamstring and proximal calf consistent with a neurological irritation. He opined that appellant’s condition was definitely work related, stating that he appeared to have lumbosacral strain with an injury to one of the lumbar discs, causing impingement and secondary lumbar radiculitis. Dr. Michael further indicated that x-rays showed no signs of any degenerative changes. On November 21, 2002 he stated that an MRI scan had revealed no sign of a herniated disc or any degenerative changes or neural impingement and opined that appellant had a chronic lumbosacral strain with a secondary radicular component. On February 19, 2003 Dr. Michael noted that x-rays and deep venous thrombosis studies showed a small Bakers’ cyst through the distal hamstring secondary to his April 14, 2002 work injury. On March 19, 2003 he reported that an MRI scan showed significant hamstring atrophic changes involving the whole length of the hamstring. Reiterating appellant’s reported history, Dr. Michael indicated that appellant had been carrying a large mail sack when he stepped up on a step and felt pain searing through his back and left hamstring. He stated that it was “quite obvious” that appellant’s condition was consistent with his injury. In a July 7, 2003 report, Dr. Michael stated that an electromyogram/nerve conduction study showed normal neural function to the hamstrings and stated that appellant appeared to have a primary hamstring strain with secondary atrophy.

On October 27, 2005 appellant’s representative submitted a letter inquiring as to the status of the request for reconsideration that he had filed on behalf of appellant on August 17, 2003. In conjunction with his inquiry, he submitted a copy of a letter dated August 17, 2003 requesting reconsideration and contending that “the prior decision” was contrary to fact and law. The August 17, 2003 letter also indicated that medical reports and statements were attached.

On January 24, 2006 the Office denied appellant’s request for reconsideration. It noted that the request for reconsideration was not received within the required one-year time limitation. However, based on the Office’s September 3, 2003 receipt of an annotated copy of the October 16, 2002 decision bearing the phrase “must file recon[sideration],” the Office waived the one-year time limitation. It denied appellant’s request, finding that he had failed to submit any factual evidence establishing that he had sustained an injury and that the evidence submitted in support of his request for reconsideration was not relevant to that issue.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS

Appellant has not alleged or shown that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by the Office. Moreover, appellant has failed to submit relevant and pertinent new evidence not previously considered by the Office. Therefore, the Board finds that appellant failed to meet any of the standards under section 8128(a) of the Act which would require the Office to reopen the case for merit review.

Subsequent to the Office's October 16, 2002 decision, appellant submitted numerous copies of previously submitted documents, including his narrative statement, x-ray reports, disability slips and medical reports. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁴

In its October 16, 2002 decision, the Office found that appellant had failed to establish the fact of injury because his description of the alleged employment incident was too vague. Appellant never alleged a specific mechanism of injury or date, time or place of injury. In support of the request for reconsideration, he also submitted numerous medical reports, including an August 29, 2002 report from Dr. Brown and various reports from Dr. Michael. Therefore, insofar as the medical reports submitted in support of appellant's request for reconsideration addressed appellant's diagnosed condition and its cause, the reports are irrelevant to the issue at hand. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵ The Board also notes that the medical reports provide conflicting factual histories and do not support appellant's allegation that he suffered a traumatic injury on

¹ Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(1)-(2).

³ *Id.* at § 10.607(a).

⁴ See *Manuel Gill*, 52 ECAB 282 (2001).

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

August 19, 2002.⁶ Moreover, appellant did not submit any corroborative evidence, such as witness statements, to support his allegation that he sustained a traumatic injury on August 19, 2002.

As appellant has failed to meet any of the standards under section 8128(a) of the Act which would require the Office to reopen the case for merit review, the Board finds that the Office did not abuse its discretion in denying his request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2006 is affirmed.

Issued: August 8, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁶ On August 28, 2002 Dr. Brown indicated that appellant's reported version of his injury was ambiguous and that he was unable to provide a specific date of injury. On October 3, 2002 Dr. Michael stated that appellant gradually started having low back and leg pain following an April 14, 2002 work injury.