

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

EDWIN R. HOLLOWAY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Louisville, KY, Employer**

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**Docket No. 06-768
Issued: July 12, 2006**

Appearances:
Edwin R. Holloway, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 14, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 5, 2006 which denied his reconsideration request without a merit review. Because more than one year has elapsed between the most recent merit decision dated May 20, 2004 and the filing of this appeal on February 14, 2006, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's requests for reconsideration dated May 30, 2005.

FACTUAL HISTORY

On January 12, 2004 appellant, then a 47-year-old clerk, filed a traumatic injury claim alleging that on September 21, 2001 he twisted his right knee while in the performance of duty. Appellant stopped work on December 12, 2003 and returned on December 24, 2003.

In support of his claim, appellant submitted a prescription note from Dr. Edward L. Fields, a family practitioner, dated November 24, 2003, who prescribed medication for knee pain and strain. Also submitted was an undated note from Norton Healthcare prepared by a graduate student, which diagnosed right knee pain and chronic and acute exacerbation.

By letter dated January 22, 2004, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a statement dated January 17, 2004 and noted that he reported his injury to his supervisor on September 21, 2001. He indicated that he reinjured his knee in August 2003 and continued to work until November 24, 2003. Appellant sought medical attention in November 2003 and underwent arthroscopic surgery on December 12, 2003. He asserted that his claim was filed late because management failed to follow through on his original notice of injury and provide him with the required paperwork to file a claim. On January 10, 2004 appellant indicated that he met with his manager and supervisor and was informed that management had not followed up with his original injury. Appellant submitted an unsigned statement noting that in September 2001 he was carrying and delivering mail and stepped on a stone and twisted his right knee.

In a statement dated January 14, 2004, the employing establishment controverted appellant's claim advising that appellant filed a CA-1 over two years after the alleged accident and failed to provide a rationalized medical report which establishes that the alleged injury occurred in the performance of duty.

In a decision dated March 8, 2004, the Office denied appellant's claim as the evidence was not sufficient to establish that the claimed medical condition is related to the established work-related events as required by the Federal Employees' Compensation Act.¹

On April 22, 2004 appellant requested reconsideration and submitted additional evidence. In a statement of the same date, appellant advised that he informed his supervisor of his injury in 2001 and continued to work from September 21, 2001 to 2003 in various levels of pain. Appellant submitted treatment notes from Dr. Greg Rennirt, a Board-certified orthopedist, dated November 23, 2003 to February 2, 2004, who noted that appellant presented on November 24, 2003 with right knee pain. He indicated that appellant sustained several accidents and injuries to his knee and diagnosed arthritis of the knee, chondrocalcinosis and prominence of the tibial tubercle from trauma. Dr. Rennirt noted that a magnetic resonance imaging scan of the right knee dated December 5, 2003 revealed a medial meniscus tear on the right. In an operative report dated December 12, 2003, he performed a partial arthroscopic medial meniscectomy, partial arthroscopic lateral meniscectomy and chondroplasty and diagnosed right medial meniscus tear. A return to work slip dated December 12, 2003 advised that appellant was totally disabled from December 12 to 23, 2003 and could return to full duty on December 24, 2003. In reports dated January 5 and February 2, 2004, Dr. Rennirt noted that appellant was progressing well postoperatively. In an undated statement, he noted that appellant twisted his knee

¹ 5 U.S.C. §§ 8101-8193.

approximately two months ago and diagnosed arthritis of the right knee, chondrocalcinosis and prominence of the tibial tubercle from trauma.

In a decision dated May 20, 2004, the Office denied modification of the prior decision.

In a letter dated May 18, 2005, appellant requested reconsideration and indicated that he was submitting a report from Dr. Rennirt dated May 16, 2005. However no evidence was submitted with the reconsideration request.

In a decision dated May 26, 2005, the Office denied appellant's request on the grounds that his reconsideration request neither raised substantive legal questions nor included any new and relevant evidence to warrant review of the prior decision.

On May 30, 2005 appellant requested reconsideration and submitted a report from Dr. Rennirt dated May 16, 2005. In his report dated May 16, 2005, Dr. Rennirt noted that he began treating appellant for a right knee injury in November 2003 and was writing to address the causation of appellant's injuries. Appellant reported that he sustained an initial right knee injury in 2001 and a reinjury in August 2003 while performing his clerk duties. He further reported that he failed to report his injury in 2001 because he was unable to get the appropriate paperwork from the employing establishment. In November 2003, Dr. Rennirt diagnosed arthritis in the knee and a meniscus tear and performed surgery at that time. He noted that "[c]ertainly, it seems reasonable that an injury that resulted from a twist of the knee with immediate swelling in the knee and immediate escalation of his symptoms, would tear his meniscus." Dr. Rennirt further opined that appellant "also has a diagnosis of arthritis in his knee and arthritis is wear-and-tear so walking long distances every day and climbing in and out of a truck would definitely contribute to arthritis."

In a letter dated August 10, 2005, appellant filed an appeal with the Board. In an order dated December 1, 2005, the Board remanded the case to the Office for reconstruction and proper assemblage and an appropriate decision on appellant's claim. The Board noted that the record was incomplete and did not include the Office's decision dated May 26, 2005.²

In a decision dated January 5, 2006, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was immaterial in nature and insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.³ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously

² Docket No. 05-1764 (issued December 1, 2005).

³ 5 U.S.C. § 8128(a).

considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Office's January 5, 2006 decision, denied appellant's reconsideration request, without conducting a merit review, on the grounds that the evidence submitted neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

However, with his May 30, 2005 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by the Office. After the May 20, 2004 decision, which denied appellant's claim because he had not submitted a rationalized medical opinion establishing that the September 21, 2001 incident caused his right knee injury, appellant submitted a report from Dr. Rennirt dated May 16, 2005 who addressed the causation of appellant's injuries. Dr. Rennirt noted appellant's history and advised that, in November 2003, he diagnosed arthritis in the knee and a meniscus tear and performed surgery at that time. He noted that "Certainly, it seems reasonable that an injury that resulted from a twist of the knee with immediate swelling in the knee and immediate escalation of his symptoms would tear his meniscus," and further opined that appellant "also has a diagnosis of arthritis in his knee and arthritis is wear-and-tear so walking long distances every day and climbing in and out of a truck would definitely contribute to arthritis."

This particular medical evidence is relevant as it addresses the causal relationship of appellant's current condition to the incident in 2001 by noting that it was reasonable that a knee twisting injury would cause swelling and a torn meniscus and that long distance walking and climbing in and out a truck would contribute to his right knee arthritis. Moreover, the evidence also addresses the issue of why appellant delayed in filing his claim and attributed the delay to appellant's inability to obtain the appropriate paperwork from the employing establishment. This evidence was not previously considered by the Office in rendering a decision. While this evidence may be of limited probative value, the Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁶ The

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.608(b).

⁶ See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), these new reports from Dr. Rennirt is sufficient to require reopening appellant's case for further review on its merits.⁷

Therefore, the Office improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. Consequently, the case must be remanded for the Office to reopen appellant's claim for a merit review. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.⁸

CONCLUSION

The Board finds that the Office, in its decision dated January 5, 2006, improperly denied appellant's request for reconsideration of his case on its merits.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further development in accordance with this decision.

Issued: July 12, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁷ Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done. *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ 20 C.F.R. §§ 10.606(b)(2)(i) and (ii) (1999); *see also Claudio Vazquez*, 52 ECAB 496 (2001).