United States Department of Labor
Employees' Compensation Appeals Board

GEORGE DIAMOND, Appellant	)	
and	)	**Docket No. 06-335**
	)	**Issued: June 2, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

Appearances:
George Diamond, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated September 28, 2005 and an August 18, 2005 denial of his claim for a schedule award. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.

ISSUES

The issues are: (1) whether appellant sustained any permanent impairment causally related to his accepted right knee condition; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of the merits under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 52-year-old casual clerk, filed a Form CA-2 claim for benefits on March 10, 2004, alleging that he developed a right knee condition causally related to factors of his employment. Appellant was on temporary assignment with the employing establishment from

November 17, 2003 though March 30, 2004. However, he was terminated for failure to report to duty as scheduled on February 15 and 16, 2004.

By decision dated May 28, 2004, the Office denied the claim, finding that appellant failed to submit sufficient medical evidence to establish that his claimed right knee condition was sustained in the performance of duty.

On January 25, 2005 appellant requested reconsideration.

In order to determine whether appellant's claimed right knee condition was causally related to his employment, the Office referred appellant to Dr. Borislav Stojic, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 5, 2005, Dr. Stojic diagnosed patellofemoral chondromalacia of the right knee. He stated that appellant's work activities during his federal employment from November 17, 2003 through February 17, 2004, resulted in a permanent aggravation of appellant's underlying chondromalacia condition.

On May 3, 2005 the Office issued an amended statement of accepted facts which indicated in relevant part:

> "The tasks reported as performed by the claimant were shared by [five] people who operate the FSM 100. All of the tasks were shared; the claimant loaded mail tubs for a maximum of one hour per day. This task was performed intermittently, not constantly as full tubs are pulled or when a mail 'run' is pulled down. The tubs were loaded in large general purpose mail containers [GPMC's]; the claimant picked the tubs up from a conveyer belt and traveled a short distance to the GPMC rather than standing in place and twisting."

On May 12, 2005 Dr. Stojic, after reviewing the amended statement of accepted facts, submitted a supplemental report in which he changed his diagnosis from permanent to temporary aggravation of patellofemoral chondromalacia of the right knee.

By decision dated June 16, 2005, the Office accepted appellant's claim for temporary aggravation of right patellar chondromalacia, resolved by April 5, 2005.

On July 14, 2005 appellant filed a Form CA-7 claim for a schedule award based on his accepted right knee condition. Appellant submitted an December 21, 2004 report from Dr. Jon D. Zolton, Board-certified in orthopedic surgery. He stated findings on examination, noted appellant's complaint of right knee pain and diagnosed degeneration in the posterior horn medial and lateral meniscus. Dr. Zolton did not submit an impairment rating of appellant's right knee.

By decision dated August 18, 2005, the Office denied appellant's claim for a schedule award. The Office noted that appellant's claim had been accepted for a temporary aggravation of patellofemoral chondromalacia of the right knee. It found that he was not entitled to a schedule award as the medical evidence did not establish any permanent impairment of his right lower extremity.

By letter dated August 21, 2005, appellant requested reconsideration. Appellant submitted an August 16, 2005 report from Dr. Gary T. Purcell, who stated:

> "After review of Dr. Stojic's report dated April 5, 2005, I agree with the report regarding [appellant's] stationary status and with the work limitations including walking, standing, pushing and pulling up to 4 hours per day; squatting and climbing occasionally up to [1] hour per day; and no kneeling, but able to work [8] hours per day, 40 hours per week. Since there has been no worsening or improvement in his condition then maximum medical improvement has been achieved."

By decision dated September 28, 2005, the Office denied appellant's request 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

The schedule award provision of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* fifth edition as the standard to be used for evaluating schedule losses.[3]

ANALYSIS -- ISSUE 1

The Office found that appellant had no permanent impairment causally related to his accepted right knee condition. Appellant was referred for examination by Dr. Stojic, who in an April 5, 2005 report, diagnosed patellofemoral chondromalacia of the right knee. Although the physician supported that appellant sustained injury due to his federal employment he did not address impairment. Appellant failed to submit medical evidence indicating that he had sustained any permanent impairment as a result of his accepted right knee condition. The report of Dr. Zolton did not address impairment of the right lower extremity caused by the accepted injury. For this reason, the Office properly found in its August 18, 2005 decision that he was not entitled to a schedule award from the Office.

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

[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[4] 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.[5]

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. Dr. Purcell merely stated summarily in his August 16, 2005 report, that maximum medical improvement had been achieved because there had been no change in appellant's condition. The issue however is whether appellant has established that he has a permanent impairment causally related to the accepted injury, rather than a temporary aggravation of an underlying condition. 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.[6] Dr. Purcell's report did not present any additional evidence pertaining to the relevant issue of whether appellant was entitled to a schedule award under section 8107. The report presented a conclusory statement, which was not pertinent to the Office's determination that, because appellant had only a temporary accepted condition, he was not entitled to a schedule award, which is only awarded for permanent conditions. Therefore, as Dr. Purcell's report carries no probative weight with regard to the Office's determination that appellant only has a temporary condition, it is not relevant to the issue in this case. 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.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a schedule member of his body causally related to his accepted right knee condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107. 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] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[5] *Howard A. Williams*, 45 ECAB 853 (1994).

[6] *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the September 28 and August 18, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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