

arthroscopic surgery which was performed on May 15, 1997 by Dr. Roberto J. Cantu, an attending Board-certified orthopedic surgeon. Appellant returned to light-duty work on September 4, 1997 four hours per day. He returned to full-duty work on January 5, 1998. On June 1, 1999 Dr. Cantu again performed arthroscopic surgery on appellant's left knee.

By decision dated May 6, 1998, the Office granted appellant a schedule award for a 22 percent impairment of the left lower extremity.

On October 12, 1999 appellant returned to full-duty work in a training position.

In an April 26, 2000 decision, the Office granted appellant a schedule award for an additional 4 percent impairment of the left lower extremity, totaling a 26 percent schedule award.

By letter dated January 30, 2007, appellant requested authorization from the Office to seek treatment from a new orthopedic surgeon regarding the pain and discomfort he experienced in his left knee while sitting, walking, standing, kneeling and squatting. He stated that Dr. Cantu no longer handled workers' compensation cases and was retiring. The Office did not respond.

On April 4, 2007 appellant filed a claim alleging that he sustained a recurrence of disability on that date. He stated that, since the March 23, 1997 employment injury, he had two surgeries on his left knee and physical therapy. Appellant experienced chronic pain and swelling in his left knee with difficulty in walking, standing and kneeling.

By letter dated April 30, 2007, the Office advised appellant to submit additional factual and medical evidence within 30 days to establish his claim. He did not respond within the allotted time period.

By decision dated May 30, 2007, the Office denied appellant's claim. It found that he failed to establish a recurrence of disability on April 4, 2007 due to his March 23, 1997 employment injury.

In a letter dated July 3, 2007, appellant requested reconsideration. He contended that he was unable to provide the requested medical evidence because the Office had denied him the opportunity to seek medical treatment from another physician.

By decision dated August 17, 2007, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant a merit review of the Office's prior decision.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹

¹ 20 C.F.R. § 10.5(x).

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.² Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a tear of the medial meniscus of the left knee while in the performance of duty on March 23, 1997. On April 4, 2007 he sought compensation for his left knee condition. The Board finds that appellant has failed to submit rationalized medical evidence establishing that his claimed recurrent left knee condition was caused or aggravated by his accepted employment-related tear of the medial meniscus of the left knee.

Appellant did not submit any medical evidence in response to the Office's April 30, 2007 developmental letter. There is no medical evidence to establish that he sustained disability as of April 2007 due to his accepted condition. He failed to submit any rationalized medical evidence establishing that his disability on April 4, 2007 resulted from the effects of his March 23, 1997 tear of the medial meniscus of the left knee. The Board finds that appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,⁶ the Office's regulations provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

³ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(1)-(2).

decision.⁸ 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.⁹

ANALYSIS -- ISSUE 2

On July 3, 2007 appellant disagreed with the May 30, 2007, finding that he did not sustain a recurrence of disability on April 4, 2007 due to his March 23, 1997 injury. The underlying issue in this case is whether his recurrence of disability on April 4, 2007 was causally related to his employment-related injury. The Board notes that this issue is medical in nature.

Appellant contended that he was unable to provide the requested medical evidence because the Office had denied him the opportunity to change his attending physician. The record does not contain any decision by the Office denying his request for a change of physicians. Appellant did not submit any rationalized medical evidence which addressed the relevant issue in the present case *i.e.*, whether he sustained a recurrence of disability on April 4, 2007 causally related to his March 23, 1997 accepted employment-related injury.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constituted relevant and pertinent new evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.¹⁰

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on April 4, 2007 causally related to his March 23, 1997 employment-related injury. The Board further finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

⁸ *Id.* at § 10.607(a).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB ____ (Docket No. 05-1738, issued November 8, 2005).

ORDER

IT IS HEREBY ORDERED THAT the August 17 and May 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 2, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board