

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE,)
Harmond, IN, Employer)

**Docket No. 08-36
Issued: June 5, 2008**

Appearances:
Linda Temple, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 10, 2007 nonmerit decision which denied his request for reconsideration.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this nonmerit decision.

ISSUE

The issue is whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹ Appellant only appealed the September 10, 2007 decision regarding his claim for consequential injury. Therefore neither the May 8, 2007 decision denying the additional schedule award nor the November 9, 2006 nonmerit decision will be reviewed on appeal.

FACTUAL HISTORY

On April 15, 1991 appellant, then a 47-year-old letter carrier, sustained a right knee condition after walking down stairs while delivering mail. His claim was accepted for right hamstring strain. Appellant was also awarded a schedule award for 14 percent permanent impairment of the right lower extremity.

On May 20, 1999 appellant filed an occupational disease claim for additional right knee conditions due to repetitive factors of his employment specifically carrying a mailbag, walking and climbing stairs. His claim was accepted for aggravation of osteoarthritis of the right knee and torn medial meniscus. Appellant was subsequently awarded an additional three percent impairment of his right lower extremity on November 6, 2000.

In a March 24, 2005 letter, appellant requested that his claim be expanded to include his left hip, knee, ankle and foot and back as consequential injuries. He argued that his prior right knee and hamstring injuries caused stress in these additional areas due to a decrease in range of motion.

On September 9, 2005 the Office denied appellant's claim for consequential injuries. The Office found that the medical evidence was insufficient to establish that appellant's left knee arthritic condition was related to his accepted right leg conditions.

On October 6, 2005 appellant requested an oral hearing which was subsequently held on April 12, 2006.

In a June 28, 2006 merit decision, the Office affirmed the previous denial of appellant's claim for consequential injuries finding that the medical evidence was insufficient to establish the claim.

On October 15, 2006 appellant requested reconsideration and submitted additional information.²

In a November 9, 2006 nonmerit decision, the Office denied appellant's request for reconsideration on the grounds that no new and relevant evidence was submitted.

On June 11, 2007 appellant requested reconsideration of the November 9, 2006 decision and argued in his letter that the enclosed additional doctor reports constituted meaningful evidence to establish his claim.

On July 11, 2007 the Office informed appellant that he could not request reconsideration of the November 9, 2006 decision as it was not a merit decision. On August 15, 2007 appellant requested reconsideration of the June 28, 2006 merit decision.

² Documents and correspondence addressing appellant's schedule award claim were also submitted.

Additional documents were submitted. In an April 21, 2005 visit report, Dr. U.H. Patel, a Board-certified orthopedic surgeon, diagnosed bilateral osteoarthritis in the knees based on x-rays.

In a February 9, 2007 letter, Dr. A.K. Morrissey³ stated that he had treated appellant for a left knee injury in 1988 and a right knee injury in 1991. He opined that the nature of appellant's employment, specifically climbing, walking stairs and standing, caused further deterioration of his left knee. Dr. Morrissey further opined that appellant's injuries experienced to both knees as a letter carrier contributed to the present left knee condition. In a March 17, 2007 letter, Dr. Edward Kawecki, a chiropractor, opined that appellant had complained of pain in the left knee since 1988, that appellant's knee and back problems were due to chronic abuse by climbing, and that appellant's type of injuries were work related.

Copies of previously submitted reports were enclosed with appellant's reconsideration request specifically a May 10, 1999 letter from Dr. Patel, a November 7, 2005 letter from Dr. Jonathan Javors, a May 24, 2006 permanent partial impairment rating from Dr. Javors for the right knee, a July 12, 2006 letter from Dr. Javors and a February 5, 2007 report from Dr. Javors regarding the right knee schedule award. Patient visit records from March 11, 1994 through July 5, 2005 were also submitted.

In a September 10, 2007 nonmerit decision, the Office denied appellant's reconsideration request. The Office found that that the medical evidence did not address the issue of whether appellant's left knee condition was caused by his accepted right leg condition and therefore was not considered to be new and relevant evidence which would have been given merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

Section 8128(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 review on the merits.⁵ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary

³ Board certification could not be verified.

⁴ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁵ 20 C.F.R. § 10.606(b)(2).

value and does not constitute a basis for reopening a case.⁶ Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.⁷

ANALYSIS

The Office is required to reopen a case for merit review if appellant demonstrates that the Office erroneously applied a specific point of law, puts forth relevant and pertinent new evidence or presents a new relevant legal argument. Appellant did not argue that the Office erroneously applied a point of law. He submitted additional medical information with his request. The issue is therefore whether this additional medical evidence was new and relevant to the issue of whether appellant's left knee condition was consequential to the accepted right knee injury. Copies of reports previously submitted were submitted again but are duplicative. Evidence that duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸ The only evidence submitted with appellant's reconsideration request that has not been addressed is the reports from Drs. Patel, Morrissey and Kawecki. Dr. Patel's visit report only diagnosed bilateral osteoarthritis in the knees and did not provide any opinion as to the cause of these conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Patel's report is not relevant evidence. Dr. Morrissey opined that the nature of appellant's employment, specifically climbing, walking stairs and standing, caused further deterioration of the left knee. He also stated that appellant's injuries to both knees during his years as a letter carrier contributed to the present left knee condition. While Dr. Morrissey stated that appellant's work duties contributed to his left knee condition, this opinion alludes to a new occupational injury claim, not a consequential injury. His report is not relevant evidence. Dr. Kawecki opined that appellant's knee condition was work related but did not identify appellant's previously accepted conditions as the cause of his current left knee condition. Even if he had provided a medical rationale and concluded that the right knee condition caused the left knee condition his opinion would have no probative value as he is not considered to be a physician under the Act. A chiropractor is not considered to be a physician unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹⁰ Only a physician under the Act can provide a diagnosis.¹¹ Dr. Kawecki did not diagnose a subluxation based on an x-ray, therefore he is not considered a physician under the Act and his report is of no probative medical value. His report is not relevant evidence. As appellant did not submit any relevant and pertinent new evidence he is not entitled to merit review by the Office.

⁶ *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

⁷ *Kevin M. Fatzner*, 51 ECAB 407 (2000).

⁸ *James W. Scott*, 55 ECAB 606 (2004).

⁹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ 5 U.S.C. § 8101(2), *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹¹ 5 U.S.C. § 8101(2).

CONCLUSION

The Board finds that the Office properly denied merit review.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board