



than 20 years. Appellant first realized her condition was related to her employment in February 2005. She did not stop work.

In support of her claim, appellant submitted a magnetic resonance imaging (MRI) scan report from Dr. Kenneth Krone, a Board-certified radiologist, who diagnosed degenerative changes in the right knee medial compartment and lateral meniscus as well as a possible intrasubstance tear of the medial meniscus. She provided a description of her letter carrier duties and a statement attributing her knee condition to an accepted back condition. Appellant submitted documents relating to a lumbar condition, for which she filed a separate claim.<sup>1</sup> On July 15, 2004 Dr. Brian Clague, a Board-certified neurosurgeon, noted that appellant had returned to work after sustaining an accepted back strain in 1999. In an October 15, 2004 surgical report, Dr. Clague noted that appellant underwent a bilateral hemilaminotomy. In an October 26, 2004 follow-up report, he indicated that appellant was recovering well and that her symptoms seemed to have improved. In a November 30, 2004 report, Dr. Clague noted appellant's lumbar decompression and complaints of intermittent leg pain, which he attributed to inactivity.

In a May 31, 2005 report, Dr. Clague noted appellant's complaints of episodic pain in her right knee and persistent pain in her left knee. On examination, he found that appellant's right knee was slightly larger than her left knee and that both knees exhibited tenderness. Dr. Clague explained that appellant's right knee tenderness was located along the right medial surface, lateral to the inferior patella, and that her left knee tenderness was concentrated on the outer surface of the lateral tibial plateau. He noted that she had full range of motion of the knees and an unremarkable gait. Dr. Clague did not provide a specific diagnosis but recommended an MRI scan to rule out a possible serious knee condition.

By decision dated March 1, 2006, the Office denied appellant's occupational disease claim on the grounds that she had not established a causal relationship between the accepted work-related events and her knee condition.

Subsequent to the Office's decision, appellant submitted an April 14, 2006 chest x-ray report from Dr. Terril Efird, a Board-certified diagnostic radiologist, noting no acute pulmonary disease. In an undated appeal form received by the Office on September 25, 2006, she requested reconsideration.

By decision dated October 17, 2006, the Office denied appellant's request for reconsideration without a merit review on the grounds that she had not articulated a new factual or legal argument or presented new and relevant evidence.

### **LEGAL PRECEDENT**

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for review of the merits. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the

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<sup>1</sup> The lumbar claim, No. 131184867, is not before the Board on the present appeal.

Office in using this discretion.<sup>2</sup> The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>3</sup>

Section 10.608(b) provides that when an application for review of the merits of a claim 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.<sup>4</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>5</sup>

### ANALYSIS

The Board finds that the Office properly denied appellant's request for reconsideration without conducting further merit review. Appellant did not meet one of the above-listed three regulatory criteria for reopening her claim. Appellant's request for reconsideration consisted only of an undated appeal form on which she checked a box indicating that she sought reconsideration. She neither asserted that the Office misapplied or misinterpreted a specific point of fact or law nor advanced a new and relevant legal argument. Accordingly, she did not meet either of the first two criteria for a merit review.

Appellant also has not provided new and relevant evidence.<sup>6</sup> Following the Office's March 1, 2006 decision, appellant submitted an April 14, 2006 chest x-ray from Dr. Efird. However, this report does not constitute new and relevant evidence sufficient to warrant further merit review because it addresses a potential pulmonary condition, not the right knee condition which is the issue of the instant claim. Dr. Efird's chest x-ray is not relevant to the issue of

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<sup>2</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>6</sup> On appeal, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

whether appellant sustained a work-related knee condition and does not constitute a basis for reopening her claim for a review of the merits. The Board finds that the Office properly denied appellant's request for reconsideration as appellant has not met the three regulatory criteria warranting a merit review.

**CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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