United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 08-902**
	)	**Issued: September 9, 2008**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 5, 2007 nonmerit decision denying his request for further merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The most recent merit decision of the Office is dated October 19, 2006. Because more than one year has elapsed between the last merit decision of the Office and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

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

FACTUAL HISTORY

On August 10, 2006 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that he sustained bilateral pain in his knees in the performance of duty. He first realized the disease was caused or aggravated by his employment on August 1, 2006.

In a statement accompanying his claim, appellant alleged that he had problems with both knees since 1990 and had two prior accepted claims for his knees.[1] Appellant alleged that his claim was actually a recurrence of his accepted conditions. He stated that he was working in a new job which was identified as a "mounted route." Appellant indicated that he was six-feet four inches tall and drove his vehicle for several hours a day, which required that he get in and out of his vehicle approximately "500 times a day." He alleged that he had to bend his knees to get in and out of the vehicle. In addition appellant had to climb stairs and deliver large packages, all of which caused stress to his knees.

On August 21, 2006 Rod Sotomayor, a supervisor, controverted the claim. He confirmed that appellant had a prior claim in 1991 and was returned to full duty by his physician. Mr. Sotomayor also indicated that appellant had more than six claims which were denied by the Office.

In an October 19, 2006 decision, the Office denied appellant's claim. It found that the medical evidence did not demonstrate that his knee condition was related to established work-related events.

In reports dated October 31 and November 3, 2006, Dr. Lindy O'Leary, Board-certified in preventive and occupational medicine, diagnosed bilateral knee pain with early degenerative arthritis. She indicated that appellant could return to modified duty.

On October 16, 2007 appellant requested reconsideration. He provided a statement contesting the accuracy of Dr. O'Leary's opinion. Appellant listed his previous knee injuries and described his work duties. He noted that his route took longer than eight hours, that he was not given assistance and that stepping out of his vehicle and walking on uneven surfaces caused tears in the cartilage of both knees.

Appellant also provided the Office with a copy of a grievance contending that the information provided by the employing establishment regarding his injury history prior to work at the employing establishment was untrue. In a March 21, 2007 report, Mr. Sotomayor addressed appellant's duties and his delivery route. Appellant also submitted an unsigned health care provider form that indicated that he had chronic knee pain and hip pain and which noted his disability and work restriction status. An operative report from May 18, 1990 pertained to a left partial lateral meniscectomy. On May 2, 1991 appellant underwent a left knee partial lateral meniscectomy and on February 4, 1994, a right knee meniscectomy.

In a January 12, 2006 report, Dr. Raymond Sachs, a Board-certified orthopedic surgeon, noted that appellant had a prior anterior cruciate ligament tear to his left knee while in military service in 1983 and underwent an arthroscopy but did not have an anterior cruciate ligament repair or reconstruction. Appellant's condition worsened and required two arthroscopies in 1990 and 1991 for cartilage tears. Dr. Sachs indicated that appellant had periodic giving way of the left knee and bulking of the knee in 1993 while playing softball as well as a complete rupture of the posterior cruciate ligament. In a December 4, 2006 operative report, he performed an

[1] Appellant identified one of his claims as a March 15, 1991 claim under file number 12-0945933; he indicated that he could not find the other claim number.

arthroscopy with partial medial meniscectomies in both knees. On January 4, 2007 Dr. Sachs noted that appellant had old injuries to both knees and that his May 1990 left knee arthroscopy revealed an anterior cruciate ligament tear. He related that, in February 1994 appellant had an arthroscopy of the right knee for an isolated posterior cruciate ligament tear and in March 2005, he was seen for aching pain on the medial aspect of both knees. Dr. Sachs indicated that appellant's pain worsened in July 2006, which was one month after starting a new job in which he was required to get in and out of a truck multiple times a day. He noted appellant's belief that stress on his knees was responsible for the increased pain. In a July 9, 2007 report, Dr. Sachs noted that in the prior 20 years appellant had several surgeries to both knees and hips with significant degenerative changes in multiple joints and a posterior cruciate tear of one knee and an anterior cruciate tear of the other. He indicated that appellant should be on light duty and advised that he could not do any of his postal duties for an extended period of time. Dr. Sachs noted that appellant's condition would worsen with time.

By decision dated November 5, 2007, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that it neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[2] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

> "(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(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 [the Office]."[3]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[4]

[2] 5 U.S.C. § 8128(a).

[3] 20 C.F.R. § 10.606(b).

[4] *Id*. at § 10.608(b).

ANALYSIS

Appellant disagreed with the Office's October 19, 2006 decision, which denied his occupational disease claim because he did not submit medical evidence establishing that he had a bilateral knee condition due to factors of his federal employment. The underlying issue on reconsideration is medical in nature, whether the medical evidence establishes that employment duties caused or aggravated appellant's claimed condition and can only be resolved through the submission of relevant medical evidence. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether he sustained a bilateral knee condition in the performance of duty.

In his October 16, 2007 request for reconsideration appellant submitted a statement listing his duties and contesting the report of Dr. O'Leary, a grievance and a statement from Mr. Sotomayor. However, as noted above, the issue is medical in nature. Therefore, this information is not relevant as the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[5]

Appellant also submitted an unsigned report from his healthcare provider, which indicated that he had chronic knee pain and hip pain, advising that he could return to work with permanent restrictions and that he was incapacitated from August 18 to September 1, 2006. However, the Board has held that an unsigned medical report with no adequate indication that it was completed by a physician is not considered probative medical evidence.[6] Thus, this report is not relevant as the issue is medical in nature.

Appellant also submitted reports dated January 12, December 4, 2006 and July 9, 2007 from Dr. Sachs and reports dated October 31 and November 3, 2006 from Dr. O'Leary. However, these reports only contained findings and diagnoses and are not relevant as they do not contain a physician's opinion supporting that appellant's work duties caused or aggravated a diagnosed medical condition. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[7] Similarly, Dr. Sachs' January 4, 2007 report is not relevant. He indicated that appellant advised him that his pain worsened in July 2006, which was one month after starting a new job in which he was required to get in and out of the truck multiple times a day. While Dr. Sachs related that appellant believed that the stress on his knees was responsible for his pain, he did not provide any opinion supporting that appellant's employment caused or aggravated a diagnosed condition.

Appellant also submitted several operative reports dating from May 18, 1990 to June 17, 2002. However, these reports are not relevant as they predated the alleged injury and would not be relevant to an injury at work commencing in August 2006. The Board also notes that they did not address causal relationship.

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[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

[6] *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[7] *J.P.*, 58 ECAB ___ (Docket No. 06-1274, issued January 29, 2007).

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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