

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, FOUR PEAKS
STATION, Mesa, AZ, Employer**

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**Docket No. 09-428
Issued: August 5, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 1, 2008 appellant filed a timely appeal of the May 9, 2008 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration. Because more than one year has elapsed between the last merit decision dated April 12, 2007 and the filing of the appeal, the Board lacks jurisdiction to review the merits of his claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 26, 2007 appellant, then a 41-year-old rural carrier, filed a claim for an occupational disease. On December 3, 2005 he first became aware of a medial meniscus tear in his right knee and that the condition was caused by his federal employment. Appellant submitted medical reports dated December 22, 2005 of Dr. Joseph Meloni, an internist, who stated that appellant sustained tendinitis and right knee pain with a history of a medial meniscus tear.

Dr. Meloni opined that the diagnosed conditions were not work related. In a January 17, 2006 report, Dr. Steven J. Lewis, a Board-certified family practitioner, stated that appellant sustained a large inferior surface medial meniscus tear with sizable knee effusion. By letter dated February 28, 2007, the employing establishment controverted appellant's claim.

By letter dated March 2, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional medical evidence including, a rationalized medical report from an attending physician which described his symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on how appellant's federal employment contributed to his condition.

In a March 26, 2007 report, Dr. Eric O. Shreder, a Board-certified family practitioner and osteopath, stated that appellant sustained degenerative joint disease of the knee. Dr. Shreder opined that getting in and out of his vehicle contributed to appellant's knee condition.

By decision dated April 12, 2007, the Office denied appellant's claim. It found that the medical evidence was insufficient to establish that his right knee condition was causally related to his work-related duties.¹

On April 10, 2008 appellant requested reconsideration.² He stated that Dr. Meloni's statement that he had a history of knee problems was misleading as he had not experienced such problems. In a March 10, 2006 surgical report, Dr. Gary L. Waslewski, a Board-certified orthopedic surgeon, stated that he performed arthroscopy with a partial medial meniscectomy of the right knee to repair a medial meniscus tear.

By decision dated May 9, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and, thus, insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,³ the Office's regulations provide that 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.⁴ To be entitled to a merit review of an

¹ Prior to the instant claim, appellant filed a claim assigned number xxxxxx437 alleging that on December 3, 2005 he sustained a right knee injury as a result of slipping on a curb. By decision dated February 3, 2006, the Office denied his claim, finding that the claimed incident did not occur. Appellant requested reconsideration which was pending before the Office at the time it issued the April 12, 2007 decision in the claim on appeal.

² The Board notes that appellant's letter, received by the Office on April 10, 2008, was dated April 10, "2007," or prior to the April 12, 2007 decision.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he 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).

⁴ 20 C.F.R. § 10.606(b)(1)-(2).

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 decision.⁵ 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.

ANALYSIS

On April 10, 2008 appellant disagreed with the Office's April 12, 2007 decision which found the medical evidence of record insufficient to establish that he sustained a right knee condition causally related to his accepted employment factors. The relevant issue is whether his right knee condition was causally related to the accepted employment factors. The Board notes that this issue is medical in nature.

Appellant submitted Dr. Waslewski's March 10, 2006 surgical report which stated that he performed arthroscopy with partial medial meniscectomy to repair a medial meniscus tear of appellant's right knee. 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. Waslewski's report did not contain an opinion addressing the causal relationship between appellant's right knee condition and the accepted employment factors. Therefore, the Board finds that his report is insufficient to reopen appellant's claim for further merit review.

The evidence submitted by 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 constitute relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.⁷

CONCLUSION

The Board finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

⁵ *Id.* at § 10.607(a).

⁶ *D. Wayne Avila*, 57 ECAB 642 (2006).

⁷ *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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