United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 09-218**
	)	**Issued: July 24, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Asheville, NC, 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 October 28, 2008 appellant filed a timely appeal from an October 8, 2008 decision of the Office of Workers' Compensation Programs denying his request for reconsideration without a merit review. Because more than one year has elapsed from the last merit decision dated September 26, 2007 to the filing of this appeal, the Board lacks jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration without a merit review.

FACTUAL HISTORY

On January 14, 2004 appellant, then a 59-year-old letter carrier, filed an occupational disease claim alleging that he sustained pain and swelling in his right knee due to constant walking, climbing stairs and carrying his loaded mail satchel. He did not stop work.

Appellant submitted a January 21, 2004 report from Dr. Daniel Eglinton, a Board-certified orthopedic surgeon, who noted appellant's complaint of pain in the bent knee position while going up and down stairs. Dr. Eglinton found effusion at the patella, a spur on the tibial plateau and a retropatellar spur formation coming off the superior and inferior aspect of the patella. On February 2, 2004 he noted that a magnetic resonance imaging (MRI) scan revealed significant patellofemoral arthritis with grooving of the trochlear notch. Dr. Eglinton recommended a right knee arthroscopy.

By decision dated March 19, 2004, the Office accepted appellant's claim for aggravated patellofemoral arthritis of the right knee.

On April 23, 2004 Dr. Eglinton performed an arthroscopy, chrondoplasty and synovectomy on appellant's right knee. The Office authorized surgery. After the operation, Dr. Eglinton diagnosed Grades 4 and 5 chondromalacia of the trochlear notch and medial and lateral patellar facets with synovitis diffuse and a complex radial tear of posterior horn of the medial meniscus. In an August 10, 2004 report, he noted appellant's work restrictions and advised that appellant could return for treatment on an as-needed basis.

On January 5, 2005 appellant submitted a schedule award claim. On January 24, 2005 an Office medical adviser noted that he had reached maximum medical improvement on July 15, 2004. Based on Dr. Eglinton's diagnosis following the April 23, 2004 surgery, appellant had a two percent impairment of the right leg for a partial medial meniscectomy based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Office medical adviser also found that there was no impairment of the left lower extremity.

On January 26, 2006 Dr. Eglinton noted that appellant was at maximum medical improvement. He found that, based on the North Carolina Industrial Commissions Act, appellant had 5 percent impairment for the right knee arthroscopy, a 5 percent impairment for removal of an anatomic part with a partial medial meniscectomy and a 2.5 percent impairment for synovium and articular cartilage in the patella and trochlear notch. Dr. Eglinton concluded this totaled 12.5 percent permanent impairment of the right knee.

By decision dated September 26, 2007, the Office issued a schedule award for two percent permanent impairment of the right lower extremity. It paid appellant compensation for 5.76 weeks from July 15 to August 24, 2004. The Office noted that the impairment rating of Dr. Eglinton was not used because he did not base his impairment rating on the A.M.A., *Guides*.

Appellant, through his attorney, requested reconsideration in a letter dated September 17, 2008. Counsel questioned whether an Office medical adviser properly considered the matter. Counsel advised that appellant was seeking further opinion from Dr. Eglinton and requested additional time to submit evidence.

By decision dated October 8, 2008, the Office denied appellant's reconsideration request without further merit review, finding that he did not provide additional evidence or a legal argument to establish that the schedule award was incorrectly calculated.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a), 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.[1] Section 10.608(b) of Office regulations 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 a review on the merits.[2]

ANALYSIS

Appellant's request for reconsideration questioned the amount of compensation awarded and whether an Office medical adviser had properly considered appellant's impairment rating. Appellant noted that he would submit additional evidence. Appellant's request does not show that the Office erroneously applied or interpreted a specific point of law and does not advance a relevant legal argument not previously considered by the Office. The reconsideration request did not identify a specific point of law that was erroneously applied or interpreted and it did not advance a relevant legal argument not previously considered. Instead, the reconsideration request generally questioned whether the impairment rating was proper but did not identify or show any particular error by the Office in issuing the schedule award.

The Board also notes that appellant did not submit any pertinent new and relevant evidence with his reconsideration request. The underlying issue of his permanent impairment is medical in nature and should be addressed by the submission of pertinent new medical evidence. However, no new medical evidence was submitted with the reconsideration request. While the reconsideration request asked for additional time to obtain further medical opinion, Office regulations do not provide for additional time to submit new evidence on reconsideration. Instead, the regulations indicate that supporting documents should be submitted with the reconsideration request.[3] In this case, the request for reconsideration was not submitted until after 11 months had passed from the issue date of the schedule award. Appellant had adequate time to obtain additional medical evidence.

Consequently, the Office properly denied appellant's reconsideration request as it did not meet any of the regulatory standards for reopening the claim.

CONCLUSION

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

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[1] 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007).

[2] *Id*. at § 10.608(b); *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008).

[3] *Id*. at § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 8, 2008 is affirmed.

Issued: July 24, 2009
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