

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Compton, CA, Employer**

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**Docket No. 08-1291
Issued: March 12, 2009**

Appearances:
Ron Watson, 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 March 31, 2008 appellant, through counsel, filed a timely appeal from a November 6, 2007 nonmerit decision of the Office of Workers' Compensation Programs denying her right knee injury claim. Because more than a year has elapsed between the most recent merit decision dated October 24, 2006 and the filing of the appeal, the Board lacks jurisdiction to review the merits of this 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 a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 30, 2006 appellant, a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) for right knee pain. She attributed her condition to walking and the repetitive motions she does in the performance of her federal employment. Appellant first became aware of her condition and its relation to her employment on August 3, 2006. She

reported an August 3, 2004 incident when, near the end of her workday, her right knee started hurting and was swollen the next morning.¹ Appellant consulted with a physician following this incident who told her she had “post office knee.” She also submitted form reports from Kaiser Permanente, bearing illegible signatures noting that she was seen on August 4 and 18, 2006 in the clinic and that she was placed off work for 5 days on August 4, 2006 and was placed on 14 days of restricted duty as of August 18, 2006.

By letter dated September 11, 2006, the Office notified appellant of the inadequacy of the medical evidence she submitted to support her claim and requested she submit comprehensive medical reports and evidence.

By decision dated October 24, 2006, the Office denied appellant’s claim because the medical evidence submitted did not demonstrate her alleged knee injury was related to the established work-related factors of employment.

Subsequently appellant submitted medical reports documenting visits to Kaiser Permanente. Two of these reports were duplicative of the August form reports previously submitted. By letter dated October 16, 2007, appellant requested reconsideration. On October 23, 2007 the Office also received another form report from the Kaiser Permanent clinic, dated December 13, 2006, which stated a diagnosis of knee degenerative joint disease and arthritis, and noted that appellant’s restrictions were permanent. The signature on this form is again illegible.

By decision dated November 6, 2007, the Office denied merit review of the claim.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees’ Compensation Act² vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.³

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.⁴ 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

¹ Appellant reported the date on the CA-2 form as August 3, 2004. However, she later clarified, in a letter, that the date was August 3, 2006.

² 5 U.S.C. § 8128(a) ([t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).

³ *Jeffrey M. Sagrecy*, 55 ECAB 724 (2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

⁴ 20 C.F.R. § 10.606(b)(2).

reconsideration without reopening the case for a review on the merits.⁵ 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.⁶

ANALYSIS

Appellant's request for reconsideration dated October 16, 2007, neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2).⁷

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted medical evidence which was previously of record. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening the case.⁸ Although the August 4 and 18, 2006 medical reports prescribed five days of disability with restrictions, these reports were previously submitted and reviewed by the Office and, therefore, do not constitute a basis for reopening appellant's claim for merit review.

Furthermore, the December 12, 2006 report, proffering a diagnosis of knee degenerative joint disorder and arthritis, although new, contributes nothing relevant or pertinent to the analysis of the underlying issue: whether appellant's knee condition is causally related to factors of her federal employment. This report did not contain a physician's findings upon examination or proffer a medical rationale explaining how and why the diagnosed knee condition was caused by factors of appellant's federal employment. 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 Therefore, this report is insufficient to establish the causal relationship and do not constitute a basis for reopening a case.

As appellant did not submit any relevant and pertinent new evidence, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹⁰

⁵ 20 C.F.R. § 10.608(b).

⁶ *Annette Louise*, 54 ECAB 783 (2003).

⁷ 20 C.F.R. § 10.608(b)(2)(i) and (ii).

⁸ *Denis M. Dupor*, 51 ECAB 482 (2000).

⁹ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

¹⁰ 20 C.F.R. § 10.608(b)(2)(iii).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2007 is affirmed.

Issued: March 12, 2009
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