

In a letter dated June 2, 2008, the Office informed appellant that the evidence of record was insufficient to establish his claim as the only evidence submitted was the traumatic injury claim form. Appellant was advised as to the medical and factual evidence required to support his claim. The Office gave him 30 days to submit additional information.

In response to the Office's letter appellant submitted statements dated May 20 and June 16, 2008. In progress notes dated May 21 and June 11, 2008, Dr. Larry L. Grabhorn, a treating Board-certified aerospace medicine physician, noted that appellant twisted his right knee on May 20, 2008 while climbing into a helicopter and diagnosed severe right knee pain. On physical examination, there was no swelling, bruising or erythema and no tenderness along the joint line. Dr. Grabhorn noted appellant's patella moved freely and tracked normally without crepitation with pain in flexion. He diagnosed right knee joint pain.

By decision dated July 18, 2008, the Office denied appellant's claim on the grounds that he failed to establish fact of injury. It accepted that the May 20, 2008 incident occurred as alleged, but found that there was insufficient medical evidence to establish that his knee condition was caused by the accepted incident.

On October 30, 2008 appellant requested reconsideration and submitted his statement in support of his request.

By decision December 18, 2008, the Office denied appellant's request for reconsideration.

On February 19, 2009 appellant requested reconsideration and noted that he was submitting new medical evidence. However the evidence was not included with his request.

In a merit decision dated March 3, 2009, the Office denied modification of the June 18, 2008 decision denying his traumatic injury claim. It noted that there was no medical evidence of record to support a diagnosed condition causally related to the May 20, 2008 employment injury. The Office also noted that medical evidence referenced in his reconsideration request was not received.

On June 17, 2009 appellant requested reconsideration. He noted that he was submitting reports from a Dr. Seger and medical reports from Corpus Christi MRI Center, but they were not included with his request.

By decision dated August 12, 2009, the Office denied appellant's request for reconsideration on the grounds that he failed to raise a substantive legal question or present relevant evidence.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹ 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.² To be entitled to a merit review of an 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.³ 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 on the merits.⁴

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 a case.⁵ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶

ANALYSIS

The Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his right knee condition was causally related to the accepted May 20, 2008 employment injury. The most recent merit denial was dated March 3, 2009. Appellant requested reconsideration on June 17, 2009, contending that he established his claim and was submitting new medical evidence. However, the evidence referenced by appellant was not received by the Office.

Appellant's June 17, 2009 request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit any pertinent new or relevant evidence with his request for reconsideration. The issue to be resolved is a medical one and appellant did not submit any medical evidence with his request. Consequently, he is not entitled to further merit review of his claim under section 10.606(b)(2).

¹ 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.

² 20 C.F.R. § 10.606(b)(2). See *J.M.*, 60 ECAB ____ (Docket No. 09-218, issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

³ 20 C.F.R. § 10.607(a). See *S.J.*, 60 ECAB ____ (Docket No. 08-2048, issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

⁴ 20 C.F.R. § 10.608(b). See *Y.S.*, 60 ECAB ____ (Docket No. 08-440, issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁵ *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

The Board finds that appellant was not entitled to further consideration of the merits of his claim pursuant to three requirements under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 12, 2009 is affirmed.

Issued: July 12, 2010
Washington, DC

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

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

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