

when the brakes on the man-lift he was operating shuttered, which caused the basket to turn and threw appellant off balance.

Appellant submitted a report dated August 30, 2007, in which Dr. Paul A. Stanton, a Board-certified orthopedic surgeon, presented findings on examination and diagnosed a torn right-knee medial meniscus.

By decision dated September 10, 2007, the Office accepted that the identified employment incident occurred as alleged. It denied the claim because the evidence of record did not demonstrate that this employment incident caused a medically-diagnosed injury.

On June 11, 2008 appellant requested reconsideration.

Appellant submitted a note dated October 29, 2007 in which he described the June 13, 2007 incident and explained how it caused his injury.

By decision dated September 3, 2008, the Office denied modification of its September 10, 2007 decision.

On April 28, 2009 appellant requested reconsideration.

By decision dated May 13, 2009, the Office denied the request without conducting a merit review.

On August 19, 2009 appellant, through his attorney, requested reconsideration.

Appellant submitted a copy of his October 29, 2007 note and Dr. Stanton's August 30, 2007 report.

On October 21, 2008 Dr. John H. Naheedy, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right knee revealed a torn medial meniscus.

By decision dated November 30, 2009, the Office denied the request without conducting a merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against

¹5 U.S.C. §§ 8101-8193.

compensation.² The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).³

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ 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.⁵ 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.⁶ 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.⁷

ANALYSIS

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Therefore appellant was not entitled to reconsideration under the first two enumerated grounds.

Concerning the third enumerated ground, appellant submitted a copy of his October 29, 2007 note and Dr. Stanton's report. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸ This evidence was previously of record and considered by the Office in rendering its prior decisions. Therefore, this evidence provides no basis for reopening appellant's claim for further merit review.

Appellant also submitted Dr. Naheedy's October 21, 2008 report. The issue underlying appellant's claim was causal relationship. Dr. Naheedy diagnosed a right-knee medial meniscus tear but provided no reasoned discussion that explained how the accepted employment incident caused the condition he diagnosed. Lacking such discussion, his report is not relevant or pertinent to the issue underlying appellant's claim and, consequently, provides no basis for reopening appellant's claim for merit review.

² *Id.* at § 8128(a).

³ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

⁴ 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).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

Appellant has not satisfied any of the above-mentioned criteria. The Board finds that the Office properly refused to reopen his case for merit review

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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