



## **FACTUAL HISTORY**

On January 17, 2010 appellant, then a 58-year-old mail handler, filed an occupational disease claim Form CA-2 alleging that he developed a right knee strain and torn ligament from years of pushing/pulling large post office equipment. He stated that he first became aware of his condition on January 8, 2010 and of its relationship to his employment on April 18, 2007.

By letter dated February 19, 2010, the Office informed appellant that the evidence of record was in fact insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In an undated letter, appellant stated that he would be submitting documentation from 2002 and 2004 which showed that he had right knee problems at work and was placed on light duty. He noted that his knee problem has been ongoing and came to light after years of dealing with the pain. Appellant had the left knee replaced in 2007 but the constant standing, lifting and pushing/pulling of old equipment had now injured his right knee.

In a December 7, 2009 magnetic resonance imaging (MRI) scan, Dr. Chandra Mouli, Board-certified in diagnostic radiology, reported that appellant's right knee showed severe osteoarthritis of the medial knee joint compartment and patellofemoral articulation associated with severe chronomalacia of the medial tibial and femoral condyles and patella. She also noted that degenerative spurring of medial tibial and femoral condyle and a large grade 3 tear of the posterior horn of the medial meniscus.

In a January 7, 2010 x-ray report, Dr. Jeffrey S. Meisles, a Board-certified orthopedic surgeon, reported that the right knee demonstrated advanced tricompartmental osteoarthritis and the left knee showed a well-aligned total knee replacement. By letter that same date, he stated that he treated appellant in 2004 for his left knee. In 2007, appellant underwent a knee replacement. Dr. Meisles further noted that appellant's right knee pain was worse than the left knee prior to the knee replacement and that he and appellant wanted to proceed with total knee arthroplasty.

Appellant submitted a March 16, 2010 claim for compensation form (Form CA-7) requesting leave without pay for the period March 12 to 26, 2010.

By decision dated March 30, 2010, the Office denied appellant's claim finding that the evidence did not establish that the claimed medical conditions were related to the established work-related events.

On May 5, 2010 appellant requested reconsideration. He stated that his pain had been ongoing over the years but he kept working which made it worse. Appellant indicated that he would be submitting documents in support of his claim. He submitted a September 19, 2007 Office decision for claim File No. xxxxxx582 which accepted his claim for localized primary osteoarthritis left lower leg and pain in joint left lower leg.

In a March 27, 2010 Form CA-7, appellant requested leave without pay for the period March 26 to April 9, 2010.

By decision dated May 24, 2010, the Office denied appellant's request for reconsideration finding that he did not raise a substantive legal question or included any new and relevant evidence.<sup>3</sup>

### **LEGAL PRECEDENT**

To reopen a case for merit review under section 8128(a), 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.<sup>4</sup> 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.<sup>5</sup>

### **ANALYSIS**

The Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The only Office decision before the Board on appeal is the May 24, 2010 decision, denying appellant's application for review. Since more than 180 days elapsed between the date of the Office's most recent merit decision on March 30, 2010 and the filing of appellant's appeal on October 14, 2010, the Board lacks jurisdiction to review the merits of his claim.<sup>6</sup>

The Office accepted that appellant engaged in repetitive work duties as a mail handler. The issue in this case is whether he submitted relevant evidence not previously of record or advance legal contentions not previously considered to establish that his work duties caused an injury to his right knee.

In his May 5, 2010 reconsideration request, appellant stated that his knee had been painful for many years but he continued to work which made it worse. His honest belief that work caused his medical problem is not in question. That belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. Appellant's brief

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<sup>3</sup> The Board notes that appellant submitted additional evidence after the Office rendered its May 24, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision and, therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. §510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>5</sup> *K.H.*, 59 ECAB 495 (2008).

<sup>6</sup> 20 C.F.R. § 501.3(e) requires that an application for review by the Board be filed within 180 days of the date of the Office's final decision being appealed.

recitation requesting reconsideration and identifying his injury did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

Appellant also submitted a September 19, 2007 Office decision which accepted his claim for localized primary osteoarthritis left lower leg and pain in joint left lower leg. The fact that the Office accepted a prior claim for his left leg injury is not relevant to the issue of causal relationship for appellant's right knee injury. In a March 27, 2010 Form CA-7, appellant requested leave without pay for the period March 26 to April 9, 2010. While he submitted new evidence, the Board finds that it is not relevant to the issue of causal relationship. To require the Office to reopen a case for reconsideration, appellant must submit relevant evidence not previously of record or advance legal contentions not previously considered.<sup>7</sup> Without proof that his right knee injury was caused or aggravated by the employment incident, appellant has not submitted relevant and pertinent new evidence to address the issue in this case. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>8</sup>

Consequently, the evidence does not support appellant's allegation that he sustained a right knee injury causally related to factors of his employment. Thus, appellant has not established that the Office abused its discretion in its May 24, 2010 decision under section 8128(a) of the Act because he 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 submit relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup>

### 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).

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<sup>7</sup> *E.g., Helen E. Tschantz*, 39 ECAB 1382 (1988); *Ethel D. Curry*, 35 ECAB 737 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979); *Eladio Joel Abrera*, 28 ECAB 401 (1977).

<sup>8</sup> *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

<sup>9</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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