

FACTUAL HISTORY

The case was previously before the Board. By decision dated August 11, 2008, the Board affirmed Office decisions dated June 6 and November 29, 2007.² The Board found that appellant did not submit rationalized medical evidence to establish causal relationship between his spine, knee, hip or feet conditions and his federal employment as a mail processing clerk. In a decision dated October 9, 2009, the Board affirmed a November 14, 2008 Office merit decision, finding that appellant did not submit sufficient medical evidence on causal relationship between his diagnosed conditions and his federal employment.³ The history of the case as provided in the prior Board decisions is incorporated herein by reference.

On November 17, 2009 appellant submitted a November 10, 2009 request for reconsideration of his claim. He addressed his medical history and treatment for various conditions, including his knees, hips, feet and spine and submitted additional medical evidence, including: a September 17, 1991 report of left knee surgery for a meniscal tear by Dr. David Savage, an orthopedic surgeon; a September 18, 1991 medical center discharge summary; treatment notes dated January 16, 1992 through May 10, 1999 regarding treatment for the knees, back, neck and shoulder; an August 1, 2007 lumbar x-ray and a September 10, 2009 report from Dr. Jeffrey Frenchman, a podiatrist, who advised that appellant had chronic pes planus and noted results on examination. The 1991 surgery report noted that appellant reported a history of a twisted knee in 1983. The discharge summary stated appellant was on active military duty in 1983.

By decision dated January 5, 2010, the Office denied appellant's application for reconsideration without further merit review of the claim.

LEGAL PRECEDENT

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 a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."⁵ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁶

² Docket No. 08-861 (issued August 11, 2008).

³ Docket No. 09-736 (issued October 9, 2009).

⁴ 5 U.S.C. § 8128(a) (providing that "[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").

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

ANALYSIS

Appellant submitted a November 10, 2009 request for reconsideration. He generally discussed his medical treatment for various conditions. Appellant noted osteoarthritis, uneven leg lengths, ankle instability and other conditions. He did not argue or establish that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

With his application for reconsideration, appellant submitted additional medical evidence. The treatment notes submitted include duplicative evidence that was of record and considered by the Office. This does not constitute new evidence. As to the evidence that had not been previously considered, the September 17 and 18, 1991 reports regarding the left knee surgery do not provide any history or refer to appellant's civilian federal employment. Both reports refer to a 1983 knee injury, which occurred while appellant was on military duty. The claim in this case involves repetitive activity as a mail processing clerk. Therefore, this evidence is not relevant to the underlying issue.

Appellant submitted treatment notes that are of limited legibility. None of these reports provide a medical history, refer to appellant's civilian work duties or provide an opinion on causal relationship between a diagnosed condition and federal employment. Dr. Frenchman provided results on examination of appellant's feet, without addressing any relevant information with respect to appellant's claim for compensation.

The Board finds that appellant did not submit relevant and pertinent evidence not previously considered by the Office. He did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), and therefore the Office properly declined to reopen the claim for review of the merits.

On appeal, appellant contended that he had provided new and relevant evidence. He cited Office of Personnel Management regulations, which are not relevant to compensation claims under the Act. As noted, the relevant regulations regarding appellant's application for reconsideration are found at 20 C.F.R. § 10.606(b)(2). Appellant raised the results of psychological studies and articles on limb length discrepancy and biomechanics of the foot and ankle. But the November 10, 2009 application for reconsideration did not discuss any specific studies or articles. As noted, appellant did not submit new and relevant evidence sufficient to warrant further merit review of the claim.

CONCLUSION

The Board finds appellant's application for reconsideration was insufficient to warrant merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2010 is affirmed.

Issued: March 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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