

FACTUAL HISTORY

On July 27, 2009 appellant, then a 71-year-old clerk, filed an occupational disease claim alleging that she sustained a left knee injury as a result of employment activities for 29 years. She stated that both her job as a city carrier for 17 years and her position as a modified clerk for the past 5 years, required repetitive turning, twisting, walking and pivoting that caused and contributed to her left knee condition. Appellant had a right knee replacement surgery five years earlier as a result of the same alleged employment activities.

The employing establishment controverted appellant's claim, noting that she had been working with restrictions since her April 4, 1994 injury in File No. xxxxxx492. Pursuant to appellant's limited-duty job, she was not required to twist, turn, pivot or walk excessively or to lift more than 15 pounds. Further, most of her duties as a modified clerk during the most recent five-year period were performed in a sitting position. At no time did appellant stand for hours or do considerable walking, as alleged. Supervisor Fleming acknowledged that appellant worked overtime, but stated her restrictions pursuant to a 1998 claim for a shoulder injury included only intermittent walking and standing and lifting no more than 20 pounds.

Appellant was treated by Dr. Ronald O. Schwab, a Board-certified orthopedic surgeon, for left knee pain. On July 10, 2009 Dr. Schwab noted her report that prolonged standing, lifting, kneeling and squatting at work over the previous several years had produced and aggravated her left knee condition. He diagnosed progressive osteoarthritis of the left knee. On September 3, 2009 Dr. Schwab stated that appellant's activities as a carrier included considerable walking, lifting, kneeling, squatting, stair climbing in inclement weather, all of which contributed to the development of osteoarthritis of the left knee.

In an undated statement, appellant advised that her job as a letter carrier for 17 years required her to stand and case mail for three to four hours a day, pivoting from side to side, twisting and turning her knees. She lifted trays of flats and letters, weighing 65 to 70 pounds, and bent to place them on gurneys. Delivering mail five to six hours each day in all kinds of adverse weather conditions gradually aggravated his left knee condition. The previous five years as a clerk required filling pouches with mail, which in turn required pivoting, twisting and turning six to eight hours each evening.

In a September 22, 2009 decision, OWCP denied appellant's claim on the grounds that the evidence failed to establish that the work events occurred as alleged.

On July 14, 2010 appellant requested reconsideration. In an accompanying letter, she stated that she had additional evidence that would establish her claim. Appellant contended that the 537.37 hours of overtime during the year of 2006 and 305.94 hours of overtime during the year 2007, in addition to her full-time 40-hour work week, constituted a "considerable amount of walking." She stated that she was enclosing a copy of her restrictions during that period, and a statement from Dr. Schwab.³ Appellant contended that her left knee condition was exacerbated by her reliance on the left knee while she awaited right knee surgery. In 2006 her restrictions were modified and she was approved for overtime. On October 16, 2006 appellant was allegedly

³ The above-referenced restrictions and note from Dr. Schwab were not included in the record.

released to full duty and worked overtime two to four hours a day. Her work reportedly included a considerable amount of standing and walking. Appellant reiterated that her duties as a modified clerk included walking or standing at least six to eight hours a day, as well as pivoting, squatting and twisting and contended that her left knee condition was directly related to the repetitive wear doing the requirements of my job, just as her right knee damage was.

By decision dated September 14, 2010, OWCP denied appellant's request for reconsideration, finding that the evidence presented was insufficient to warrant a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP regulations provide that the evidence or argument submitted by a claimant must:

- (1) show that OWCP erroneously applied or interpreted a specific point of law;
- (2) advance a relevant legal argument not previously considered by OWCP; or
- (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵

To be entitled to a merit review of OWCP's 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, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷ 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.⁸

ANALYSIS

In its September 22, 2009 decision, OWCP denied appellant's claim on the grounds that the evidence failed to establish that the events occurred, as alleged, namely that she had engaged in repetitive employment activities that included prolonged standing and repetitive twisting, pivoting and turning. On July 14, 2010 appellant requested reconsideration of the September 22, 2009 decision. The Board finds that OWCP properly denied appellant's request for further merit review.

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, the 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 *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

As noted above, the Board does not have jurisdiction over the merits of the September 22, 2009 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits. In her July 14, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. She merely reiterated her contention that significant overtime worked, in addition to her repetitive employment activities, caused her left knee condition. Appellant recounted the alleged progression of her job restrictions and her left knee problems, contending that OWCP based its decision on inaccurate information. Her letter merely repeats information contained in documents previously received and considered by OWCP and is, therefore, cumulative and duplicative in nature.⁹

A claimant may be entitled to a merit review by submitting new and relevant evidence. Appellant did not, however, submit any new and relevant medical evidence in support of her reconsideration request. The Board notes that she represented in her July 14, 2010 letter that she was enclosing a copy of her work restrictions, and a statement from Dr. Schwab. The record, however, does not contain either a copy of the restrictions or a note from Dr. Schwab.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by it, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, appellant reiterated her general contentions that her employment duties included significant amounts of walking and standing, which caused her left knee condition and that she worked substantial amounts of overtime during 2006 and 2007, thereby exacerbating the left knee condition. These contentions were considered below. Appellant argues that OWCP based its decision on inaccurate information provided by the employing establishment. As noted, the Board finds that the evidence submitted in support of appellant's request for reconsideration is insufficient to warrant further merit review.

CONCLUSION

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

⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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