

**United States Department of Labor
Employees' Compensation Appeals Board**

J.K., Appellant

And

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTIC AGENCY, Fort Belvoir, VA,
Employer**

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**Docket No. 11-1759
Issued: February 21, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2011 appellant, through his attorney, filed a timely appeal from a June 17, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for further merit review of his claim. As more than 180 days elapsed from the last merit decision of May 3, 2010 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction over the nonmerit decision.

ISSUE

The issue is whether OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

On appeal appellant, through counsel, contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 15, 2008 appellant, then a 55-year-old laborer, filed a traumatic injury claim alleging that while walking up stairs carrying a 20-pound tub he misstepped and twisted his right knee and thereby suffered a right medial collateral ligament sprain. OWCP accepted his claim for right knee strain/tear. On March 27, 2009 appellant underwent an authorized arthroscopy and partial lateral meniscectomy and chondroplasty of the right knee. On May 3, 2010 OWCP issued a schedule award for a two percent permanent loss of use of the right lower extremity.

On February 15, 2011 appellant requested reconsideration of his schedule award. He stated that his treating physician had submitted a recent report on the status of his injury. Although appellant submitted no new report with his request, Dr. Kuldeep S. Sidhu, appellant's treating Board-certified orthopedic surgeon, continued to submit progress reports. In a February 14, 2011 progress report, Dr. Sidhu noted that appellant had a torn lateral meniscus and degenerative joint disease in his right knee and was to remain off work permanently.

By decision dated June 17, 2011, OWCP denied appellant's request for reconsideration without reviewing the merits of the case.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's 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.³ To be entitled to a merit review of an OWCP 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.⁴ 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.⁵

ANALYSIS

OWCP issued a schedule award for a two percent impairment of appellant's right lower extremity on May 3, 2010. As the Board does not have jurisdiction to review the merits of the case, the sole issue on appeal is whether OWCP properly denied his timely filed reconsideration request.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[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).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

In requesting reconsideration, appellant did not argue that OWCP erroneously interpreted a specific point of law nor did he advance a relevant legal argument not previously considered. He did not submit any pertinent new and relevant medical evidence with his reconsideration request, but contended that his physician had submitted recent reports. Although Dr. Sidhu continued to submit progress reports, including a February 14, 2011 report wherein he indicated that appellant had a torn lateral meniscus and degenerative joint disease in his right knee and was to remain off work permanently, he did not submit any new reports indicating that appellant was entitled to a greater schedule award. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁶ Accordingly, appellant has not submitted evidence sufficient to require OWCP to reopen the case for further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2011 is affirmed.

Issued: February 21, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ *Edward Mathew Diekemper*, 31 ECAB 224 (225 (1979); *D.B.*, Docket No. 10-2036 (issued May 13, 2011).