

FACTUAL HISTORY

On December 12, 1995 appellant, then a 34-year-old part-time flexible mail carrier, twisted his left knee when he slipped on ice while delivering a parcel. In a decision dated February 14, 1996, OWCP accepted appellant's claim for left knee strain under File No. xxxxxx977. It subsequently accepted a medial meniscus tear. Appellant underwent a meniscectomy of his left knee on February 16, 1996. On May 15, 1996 he filed another claim alleging that he injured his right knee in the course of his federal employment. This claim was accepted for right knee strain under File No. xxxxxx045. OWCP combined the claims under master File No. xxxxxx977 and paid wage-loss compensation and medical benefits.

On January 17, 2012 appellant filed a notice of recurrence for medical treatment for his right knee. He noted that his knee kept locking up and that he had ongoing problems since the original injury.

By decision dated March 26, 2012, OWCP denied appellant's recurrence claim. It found that he had not submitted any evidence which addressed whether the claimed recurrence was causally related to the accepted employment injuries.

Subsequent to the March 26, 2012 decision, appellant submitted additional medical reports from Johns Hopkins Medicine. These included x-rays and magnetic resonance imaging scans conducted on April 5 and May 22, 2012, as well as progress notes dated April 5 through May 22, 2012 discussing treatment of appellant's knees.

On August 10, 2012 appellant requested reconsideration of OWCP's March 26, 2012 decision. He did not submit any evidence with his request.

By decision dated September 5, 2012, OWCP denied appellant's request for reconsideration as it determined that he did not raise any substantive legal questions or submit new and relevant evidence.

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

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 his own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

⁴ *Id.* at § 10.607(a).

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 accepted that appellant sustained right and left knee strains and a left medial meniscus tear as a result of his federal employment. Appellant's claims were combined under master File No. xxxxxx977. OWCP denied his claim for a recurrence due to medical treatment in a decision dated March 26, 2012. It denied reconsideration of this decision on September 5, 2012.

The Board finds that appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a relevant legal argument not previously considered by OWCP.⁶ He contended that OWCP considered his case under the wrong file number. The record reflects that the claims were combined under OWCP File No. xxxxxx977. Appellant did not submit new and relevant evidence with his request for reconsideration. The only new evidence submitted after the March 26, 2012 merit decision were medical reports from Johns Hopkins Medicine. None of these reports, however, addressed the issue of causal relationship. The Board has held that evidence that does not address the relevant issue involved does not constitute a basis for reopening a case.⁷

Appellant has not met any of the criteria for a merit review. Accordingly, the Board finds that OWCP did not abuse its discretion in refusing to reopen appellant's claim for review on the merits.

CONCLUSION

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

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at § 10.606(b). *See generally* 5 U.S.C. § 8128(a).

⁷ *M.F.*, Docket No. 13-352 (issued June 14, 2013); *D.K.*, 59 ECAB 141 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2012 is affirmed.

Issued: July 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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