

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

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**M.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rutland, VT, Employer**

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**Docket No. 14-728  
Issued: July 3, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 10, 2014<sup>1</sup> appellant filed a timely appeal from an August 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. Because more than 180 days elapsed between the last merit decision dated March 13, 2013 to the filing of this appeal, the Board lacks jurisdiction to review the merits of

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<sup>1</sup> See 20 C.F.R. § 501.3(f)(2) (2009). OWCP's decision was issued on August 12, 2013. One hundred eighty days from August 12, 2013 was February 10, 2013. Since using February 11, 2013 as the date of filing, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the commercial carrier's delivery mark is considered the date of filing. The date of the commercial carrier's delivery mark is February 10, 2014, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

appellant's claim, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.<sup>3</sup>

### **ISSUE**

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

On appeal, appellant disagrees with the denial of his claim.

### **FACTUAL HISTORY**

On January 16, 2013 appellant, then a 42-year-old city letter carrier, filed an occupational disease claim alleging that on December 24, 2012 he first realized that his right knee condition was due to his employment duties.

In a January 15, 2013 work injury tracking form, appellant was diagnosed with a possible right knee meniscus tear and given work restrictions.<sup>4</sup> The form noted an injury date of December 24, 2012.

In a January 16, 2013 disability note, James B. Hollinshead, a certified physician's assistant stated that appellant was restricted from delivering mail by foot, but was allowed to do curbside deliveries.

By letter dated February 7, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide this information.

In response to OWCP's request appellant submitted a narrative statement and additional medical evidence and as set forth below.

In the undated statement, appellant set forth the reasons he believed that his condition was employment related. He described the duties he performed as a letter carrier and why he believed that these duties contributed to his right knee condition. Appellant also stated that he had been performing these duties for approximately 16 years.

In a January 16, 2013 report, Mr. Hollinshead performed a physical examination and noted the history of illness. He noted that on December 24, 2012 while delivering mail appellant

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the August 12, 2013 nonmerit decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>4</sup> The signature on the form is illegible.

experienced sudden right knee pain. A diagnosis of possible meniscus tear was made. A magnetic resonance imaging (MRI) scan was scheduled for further evaluation.

In a February 11, 2013 progress note, Dr. William Lighthart, a treating Board-certified orthopedic surgeon, provided physical examination findings. He reported that a review of an MRI scan revealed a medial meniscus posterior horn tear. Appellant related that this condition was impacting his work and home activities as well as getting worse. In concluding, Dr. Lighthart stated that appellant should continue with his work restrictions.

A February 11, 2013 work injury tracking form noted that appellant was seen for a follow-up visit and needed surgery.<sup>5</sup> The form noted an injury date of December 24, 2012.

By decision dated March 13, 2013, OWCP denied appellant's claim on the grounds that the medical evidence failed to establish that the diagnosed condition was due to the identified employment factors.

In an April 27, 2013 letter appellant requested reconsideration. In support of his request he resubmitted a February 11, 2013 work injury track form.

Appellant, in an April 27, 2013 statement, related that he failed to understand why his claim was not accepted. He noted that an MRI scan revealed a meniscus tear and his physician opined that it was employment related. Appellant related that he has worked over 16 years as a letter carrier, which required walking and delivering mail in all types of weather conditions as well as going up and down stairs.

By decision dated August 12, 2013, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>6</sup> OWCP's regulations provide that 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.<sup>7</sup> 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.<sup>8</sup> When a claimant fails to meet one of the above standards, OWCP

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<sup>5</sup> The signature on the form is illegible.

<sup>6</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

<sup>7</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>8</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

will deny the application for reconsideration without reopening the case for review on the merits.<sup>9</sup>

### ANALYSIS

By letter dated April 27, 2013, appellant requested reconsideration. However, he did not submit pertinent new and relevant evidence or argument with his request. The February 11, 2013 work tracking form had previously been submitted and considered by OWCP in its March 13, 2013 decision. The Board has held that evidence which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.<sup>10</sup> Thus, this form report does not constitute relevant and pertinent new medical evidence and is insufficient to require OWCP to reopen appellant's case for further review of the merits.

In his request appellant stated that the medical evidence submitted established his claim as his physician opined that his right meniscus tear was employment related. OWCP advised him in its February 7, 2013 letter of the type of medical and factual evidence required to support his claim. However, as noted by OWCP in its March 13, 2013 decision none of the medical evidence submitted by appellant provided any explanation as to how his right knee condition was employment related. Because appellant did not raise new arguments or present new evidence that OWCP erroneously applied or interpreted a specific point of law; advanced any relevant legal arguments not previously considered by OWCP; or present any relevant and pertinent new evidence, he is not entitled to further review of the merits of his claim under any criteria of section 10.606(b)(3).<sup>11</sup>

As appellant did not meet any of the regulatory requirements for review of the merits of his claim, OWCP properly denied his April 27, 2013 request for reconsideration.

On appeal, appellant contends that he has complied with all the requirements to establish his claim. However, as noted above he failed to provide any rationalized medical opinion evidence explaining how his right knee meniscal tear was due to the employment factors he identified. In addition, the Board is unable to consider the merits of appellant's claim as the only decision within its jurisdiction is the August 12, 2013 nonmerit decision.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

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<sup>9</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>10</sup> *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

<sup>11</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *W.C.*, 59 ECAB 372 (2008); *Susan A. Filkins*, 57 ECAB 630 (2006).

**ORDER.**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 12, 2013 is affirmed.

Issued: July 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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