

FACTUAL HISTORY

On April 20, 2013 appellant, a 55-year-old mail clerk, filed a Form CA-1 claim for benefits, alleging that he injured his left leg on March 25, 2013 when he stumbled while descending a flight of stairs. The employing establishment controverted the claim; appellant's supervisor questioned why he waited almost a full month to report the incident and seek medical treatment.

In an April 20, 2013 report, Dr. Stephen Leibham, a specialist in internal medicine, stated that appellant had injured himself at work on March 25, 2013 when he fell and hit his left knee against a retaining wall. He diagnosed a sprained left knee and stated that his findings and diagnosis were consistent with appellant's account of injury or onset of illness.

In follow-up reports dated April 24 through June 26, 2013, Dr. Robert Cabico, a specialist in internal medicine and Dr. Leibham's associate, noted that appellant's left knee condition was improving, and essentially reiterated Dr. Leibham's findings and conclusions.

By letter dated July 1, 2014, OWCP informed appellant that, while it had initially handled his claim administratively and authorized payment of a limited amount of medical expenses, it was reopening his claim because his medical bills had exceeded \$1,500.00. It noted that the merits of the claim now needed to be formally considered and advised that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. OWCP asked appellant to submit sufficient evidence to establish that he experienced the employment incident at the time, place and in the manner alleged. It also asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

OWCP thereafter received several physical therapy records from U.S. Health Works, dating from May 2 through June 13, 2013.

By decision dated August 1, 2013, OWCP denied the claim, finding that appellant failed to submit sufficient evidence to establish that he experienced the employment incident at the time, place and in the manner alleged, *i.e.*, that he failed to meet his burden to establish fact of injury.

On September 6, 2013 appellant resubmitted follow-up reports dating from May 15, 2013 from Dr. Cabico. He essentially reiterated his previous findings and conclusions and opined that appellant's left knee condition had improved. Appellant also submitted several reports from a physical therapist dating from April 30 through June 13, 2013 which documented his treatment for his left knee condition.

On February 1, 2014 appellant requested reconsideration.

In an April 24, 2014 report, received by OWCP on May 5, 2014, Dr. Farzaneh Maghsoudy, a specialist in internal medicine, related that appellant had injured his right ankle when he stepped on a crack in the sidewalk on April 24, 2014.

By decision dated May 8, 2014, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require it to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

ANALYSIS

In the present case, OWCP denied appellant's claim by decision dated August 1, 2013 because he had not established that he sustained an injury on March 25, 2013 at the time, place and in the manner alleged. The Board finds that OWCP did not abuse its discretion by denying merit review on May 8, 2014.

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. He did submit new medical evidence including an April 24, 2014 report from Dr. Maghsoudy. However, the Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁵ The evidence appellant submitted in connection with his February 1, 2014 reconsideration request is not pertinent to the issue on appeal; *i.e.*, whether he established that he experienced the employment incident at the time, place and in the manner alleged. Dr. Maghsoudy's report discusses a new injury which appellant allegedly sustained on April 24, 2014 is therefore not relevant to the issue presented in the instant case.

The reports from Dr. Cabico which OWCP received in September 2013 merely reiterate findings and conclusions he made in his previous reports. Appellant essentially resubmitted reports which were previously submitted; these are therefore cumulative and duplicative.⁶ In addition, the Board notes that he submitted several reports from a physical therapist, pertaining to treatment. These reports, however, do not constitute medical evidence under Section 8101(2). Because healthcare providers such as nurses, acupuncturists, physicians assistants and physical

³ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

⁵ *See David J. McDonald*, 50 ECAB 185 (1998).

⁶ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

therapists are not considered “physicians” under FECA, their reports and opinions do not constitute competent medical evidence.⁷

Appellant’s reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant’s claim for a review on the merits in its May 8, 2014 decision.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant’s case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2014 decision of the Office of Workers’ Compensation Programs be affirmed.

Issued: November 18, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees’ Compensation Appeals Board

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

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

⁷ 5 U.S.C. § 8101(2); *see also* *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).