

FACTUAL HISTORY

On June 27, 2013 appellant, then a 49-year-old electronic multimedia information specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2013 he tripped while entering a video duplication room and fell onto his left leg. His supervisor checked a box indicating that he had been injured in the performance of duty.

On June 27, 2013 Dr. Christopher Ahmed, a Board-certified diagnostic radiologist, reviewed an x-ray of appellant's left knee. He noted moderate degenerative changes trace effusion and no acute fracture.

In a diagnostic report dated July 19, 2013, Dr. Hugh Holloway, a radiologist, obtained a magnetic resonance imaging (MRI) scan of appellant's left knee.² He noted a tear of the posterior horn of the medial meniscus and a small joint effusion, degenerative changes and marginal osteophyte formation.

On August 29, 2013 Dr. Marien Tavarez, a Board-certified internist, performed a physical examination and reviewed appellant's x-rays and MRI scan. She noted that appellant was involved in a work-related accident when he stepped onto a raised portion of flooring and tripped, twisting and injuring his left knee. On physical examination, Dr. Tavarez noted that his left knee was cool with no effusion and he had discrete medial joint line tenderness and a negative Lachman's test. She noted that drawer testing was also negative, and that his range of motion and quad tone were excellent. Dr. Tavarez noted that x-rays showed moderate arthritic changes in the knee, and that appellant's MRI scan demonstrated a medial meniscal tear. Appellant told Dr. Tavarez that he would like to have his meniscal tear surgically repaired.

On September 3, 2013 appellant requested authorization for surgery on his left knee.

In a letter dated September 4, 2013, Dr. Christopher E. Robinson, a Board-certified orthopedic surgeon, noted that appellant could return to work following two weeks off after surgery to a sedentary position.

By letter dated September 5, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It noted that his claim initially appeared to be minor and payment of a limited amount of medical expenses allowed. The claim would be adjudicated because he requested surgery. OWCP requested that he submit a narrative medical report from an attending physician, including dates of examination and treatment, the history and date of injury given to the physician, a detailed description of findings, results of all x-ray and laboratory tests, a diagnosis and clinical course of treatment and an opinion based on how the claimed work incident caused or aggravated his left knee injury. On the same date, it denied authorization for left knee surgery.

Appellant submitted a duty status report dated September 4, 2013 with an illegible signature. The report recommended sedentary duty for two weeks after surgery.

² Dr. Holloway's certification as a radiologist could not be confirmed with a search of physicians certified by the American Board of Medical Specialties or the American Osteopathic Association.

By decision dated October 9, 2013, OWCP denied appellant's claim. It found that he had not established a causal relationship between his left knee injury and the incident of June 26, 2013.

On December 3, 2013 appellant requested reconsideration of the October 9, 2013 decision. With his request, he attached a narrative statement in which he reviewed the medical development of his condition. Appellant asserted that Dr. Tavaréz clearly stated her opinion in a report dated November 7, 2013 that the fall on June 26, 2013 worsened and could have caused the tear of the posterior horn of his medial meniscus. This medical report was not submitted with appellant's request for reconsideration.

By decision dated December 16, 2013, OWCP denied appellant's request for reconsideration without reviewing the merits of the case. It found that his request neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a), 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 Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁴

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁵ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁶ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.⁷ There was no medical evidence submitted with appellant's request for reconsideration.

³ 20 C.F.R. § 10.606(b)(2); *D.K.*, 59 ECAB 141, 146 (2007).

⁴ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

⁵ See *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁶ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

⁷ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

ANALYSIS

OWCP issued an October 9, 2013 decision denying appellant's claim for compensation. On December 3, 2013 appellant requested reconsideration of this decision.

The Board does not have jurisdiction over the merits of the October 9, 2013 decision as more than 180 days passed prior to filing his appeal. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of his claim. In his December 3, 2013 request for reconsideration, appellant did not contend that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any evidence with his request. Appellant submitted a statement addressing medical development of his claim. He asserted that Dr. Tavaréz stated in a report dated November 7, 2013 that the fall on June 26, 2013 certainly worsened and could have caused the tear of the posterior horn of his medial meniscus. While appellant's statement was not previously of record, it is not relevant to the grounds upon which OWCP denied his claim. His claim was denied because he did not submit a rationalized opinion from a physician addressing how his left knee injury resulted from the incident of June 26, 2013. This is a question to be resolved by probative medical opinion. Appellant's letter listed physicians he had visited. He did not submit a physician's opinion on the causal relation of his left knee condition to the accepted incident at work. As such, appellant's letter was not relevant and thus insufficient to require a merit review of his claim.

Appellant contends that the report from Dr. Tavaréz dated November 7, 2013 contained a statement on causal relationship. This report was not before OWCP at the time of its December 16, 2013 denial of reconsideration. If a claimant fails to submit relevant evidence not previously of record, or advance legal contentions of facts not previously considered, OWCP has the discretion to refuse to reopen a case for further consideration of the merits.⁸

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 OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

The Board notes that appellant submitted evidence after the issuance of the December 16, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.⁹

⁸ *Pamela I. Holmes*, 49 ECAB 581, 586 (1998).

⁹ 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2013 is affirmed.

Issued: September 17, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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