

FACTUAL HISTORY

Appellant, worked as a 51-year-old personnel management specialist. She filed a claim for traumatic injury on October 1, 2012, alleging that she injured her right knee on September 24, 2012 when she slipped and fell while exiting an elevator.

On October 24, 2012 OWCP advised appellant that it required factual and medical evidence. It specifically asked her to submit a comprehensive report from her treating physician describing her medical condition, and an opinion as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit this evidence within 30 days.

In an October 5, 2012 report, Dr. Angelo Patsalis, a Board-certified specialist in family medicine, reported that appellant had complaints of chronic right knee pain caused by an incident in which she tripped and fell as she was leaving an elevator. He advised that she was experiencing difficulty walking and had been off work since late September 2012, when the injury occurred. Dr. Patsalis found that appellant's knee pain was worsening and he reported that she considered her knee to be unstable. On examination appellant's right knee showed a moderate amount of effusion and no patellar laxity and a negative Lachman's test. Dr. Patsalis opined that appellant had sustained a right knee injury, possibly severe in nature and scheduled a magnetic resonance imaging (MRI) scan of the right knee.

Appellant underwent an MRI scan of her right knee. In an October 12, 2012 report, the MRI scan results showed a large effusion with extensive proliferation of the sub synovial fat and a small Baker's cyst. The MRI scan report supported the finding that her right knee was structurally intact, with no evidence of medial meniscus tear or internal derangement.

By decision dated March 14, 2013, OWCP denied appellant's claim and found that she failed to submit sufficient medical evidence to establish that she injured her right knee in the performance of duty.

On April 12, 2013 appellant requested a review of the written record.

In an April 8, 2013 report, Dr. Patsalis reviewed the history of appellant's right knee pain and advised that her condition had not significantly improved. He found that she had difficulty walking and instability in the right knee. He reported a history that her knee had been giving out and locking up. Appellant had effusion on examination, a positive Lachman's test, decreased range of motion, but no patellar laxity. Dr. Patsalis recommended that appellant be seen by a specialist to evaluate the injury caused by her September 2012 fall.

By decision dated September 5, 2013, an OWCP hearing representative affirmed the March 14, 2013 decision.

By letter dated September 4, 2014, appellant, through counsel, requested reconsideration. She resubmitted Dr. Patsalis' April 8, 2013 report and the October 12, 2012 MRI scan report with her request. Appellant, however, did not submit any additional medical evidence.

By decision dated December 1, 2014, OWCP denied appellant's request for reconsideration finding that it did not raise substantive legal questions and failed to offer new and relevant evidence sufficient to require OWCP to review its prior decision on the merits.

Counsel requested a hearing before the Branch of Hearings and Review.

In a decision dated January 13, 2015, OWCP denied appellant's hearing request. It found that because appellant had already requested reconsideration, she was not, as a matter of right, entitled to a hearing with the Branch of Hearings and Review on the same issue. OWCP informed appellant that her case had been considered in relation to the issues involved but that the request was denied because the issue in this case could be addressed by requesting another reconsideration from the district office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations at 20 C.F.R. § 10.606(b) provide that a claimant may obtain review of the merits of 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 submitting relevant and pertinent evidence not previously considered by OWCP.² 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.³

A reconsideration request must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS -- ISSUE 1

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by OWCP.

OWCP also properly determined that appellant had not submitted new and relevant evidence, not previously considered. Appellant submitted Dr. Patsalis' April 8, 2013 report and

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

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ *E.O.*, Docket No. 15-0635 (issued June 5, 2015).

⁵ *Id.*

the October 12, 2012 MRI scan report with her request for reconsideration these reports, however, had been previously submitted and were therefore cumulative and duplicative.⁶

Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law and failed to 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 December 1, 2014 decision.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, states: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.⁷ A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.⁸ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.⁹ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision. OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁰ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹¹

ANALYSIS -- ISSUE 2

On December 8, 2014 appellant requested an oral hearing. Because she had previously requested reconsideration under section 8128(a) of FECA, she was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion to determine that the issue presented could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its January 13, 2015 decision.

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

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. § 10.615.

⁹ *James Smith*, 53 ECAB 188 (2001).

¹⁰ 20 C.F.R. § 10.616(b).

¹¹ *Supra* note 9.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a), and properly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2015 and December 1, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 10, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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