

between two driveways and fell injuring her right knee. She stopped work on February 13, 2013 and did not return.

Appellant was treated in an emergency room on February 13, 2013 by Dr. Eric Fernandez, Board-certified in emergency medicine, for a right knee injury. She was provided discharge instructions for a knee sprain. Also submitted was a duty status report from a physician's assistant who diagnosed right knee sprain and returned appellant to work full time without restrictions. In an excuse slip dated February 13, 2013, the physician's assistant excused appellant from work until February 15, 2013.

By letter dated February 22, 2013, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim.

Appellant submitted a statement dated February 13, 2013 and noted that she was in the process of delivering mail and she stepped onto a driveway and her right knee buckled and she fell on her buttocks. She noted the concrete slab in the driveway was uneven by four to six inches and there was no way for her to gauge her steps. Appellant indicated that after her fall the owner of the home came out to the porch to pick up her packages. She indicated that another neighbor asked her if she was injured.

In a March 11, 2013 report, Dr. Gary Rombough, a Board-certified orthopedic surgeon, treated appellant for a right knee injury. Appellant reported falling at work on February 13, 2013. Dr. Rombough noted findings of painful range of motion of the right knee, tenderness over the lateral joint line, no instability, and an intact neurovascular examination. He noted x-rays of the right knee revealed degenerative disease and he diagnosed strain of the right knee, possible torn lateral meniscus. In a prescription note dated March 11, 2013, Dr. Rombough recommended physical therapy.

The employing establishment submitted a statement from Gibrill Baba, the postmaster, who controverted the claim. The postmaster submitted statements from two home owners who indicated that they did not witness appellant's fall. In a February 13, 2013 statement, the owner of the residence where appellant allegedly fell indicated that she did not see appellant fall in the driveway. In a statement dated February 13, 2013, another resident on appellant's mail route noted that she did not see a letter carrier fall in a driveway or inquire as to whether she was injured.

In a decision dated March 29, 2013, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that the events occurred as alleged.

Appellant requested an oral hearing which was held on September 12, 2013 testified about how the claimed fall occurred. She submitted a March 11, 2013 report from Dr. Rombough, previously of record.

In a decision dated December 23, 2013, an OWCP hearing representative affirmed the March 29, 2013 decision as modified. He noted that appellant established that the incident occurred but she failed to establish her claimed right knee injury was causally related to the February 13, 2013 incident.

In a letter dated and received December 15, 2014, appellant, through counsel, requested reconsideration. She asserted that the report from Dr. Rombough was sufficient to meet appellant's burden of proof. In support of her claim, appellant submitted a four view x-ray of the right knee which revealed degenerative changes of the patellofemoral and lateral compartments. Also submitted was an x-ray of the left knee which revealed patellofemoral degenerative change with small posterior osteophytes, narrowing associated with quadriceps tendon insertion and patellar origin spurs.

In a December 19, 2014 decision, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,² OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁴

ANALYSIS

OWCP denied appellant's claim for a traumatic injury on the grounds that she failed to establish that the claimed right knee condition was causally related to the work incident of February 13, 2013. Thereafter, it denied her reconsideration request, without a merit review.

The issue presented on appeal is whether 20 C.F.R. § 10.606(b)(2), requires OWCP to reopen this case for review of the merits of the claim. In her December 15, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Counsel asserted that the report from Dr. Rombough was sufficient to meet appellant's burden of proof and referenced x-rays of the bilateral knees. These assertions do not

² *Id.* at § 8128(a).

³ 20 C.F.R. § 10.606(b)(2).

⁴ *Id.* at § 10.608(b).

show a legal error by OWCP or a new and relevant legal argument.⁵ The final question in this case is whether appellant submitted medical evidence that the claimed right knee condition was causally related to the work incident of February 13, 2013. That is a medical issue which must be addressed by relevant new medical evidence.⁶

Appellant did not submit any new and relevant medical evidence in support of her claim. She submitted a four view x-ray of the right knee which revealed degenerative changes of the patellofemoral and lateral compartments. Also submitted was an x-ray of the left knee which revealed patellofemoral degenerative change with small posterior osteophytes and narrowing associated with quadriceps tendon insertion and patellar origin spurs. However, these reports, while new, are not relevant because they do not specifically address the issue of whether appellant's right knee condition was causally related to the work incident of February 13, 2013. The Board has held that the submission of evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim.⁷ Thus, these reports are insufficient to require OWCP to reopen the claim for a merit review.

The Board 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 by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant asserts that she offered sufficient evidence to establish that she sustained a right knee injury causally related to her fall on February 13, 2013. She referenced a March 11, 2013 report from Dr. Rombough. As explained, the Board does not have jurisdiction to review the merits of the claim. Appellant did not submit any evidence or argument in support of her reconsideration request that warrants reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

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

⁵ Furthermore, rearguing the relevance of a previously considered medical report is insufficient to require a merit review. *See L.J.*, Docket No. 11-2027 (issued May 14, 2012).

⁶ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ *Johnnie B. Causey*, 57 ECAB 359 (2006).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2015
Washington, DC

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

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

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