

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

A.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer**

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**Docket No. 15-1569
Issued: October 21, 2015**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2015 appellant, through counsel, filed a timely appeal from a March 17, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from December 2, 2014, the date of the most recent OWCP merit decision, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 22, 2013 appellant, then a 29-year-old mail handler, filed a recurrence of disability claim (Form CA-2a) alleging that on November 9, 2013 she had a recurrence of a

¹ 5 U.S.C. § 8101 *et seq.*

December 12, 2009 employment injury (right knee contusion) when her right knee buckled as she bent down to put mail into a tray. OWCP determined that it was a claim for a new injury and developed it as a new traumatic injury claim.² Appellant stopped work on November 10, 2013.

Appellant submitted a June 16, 2013 claim for compensation (Form CA-7) requesting compensation for November 16 through December 13, 2013.

By letter dated January 8, 2014, OWCP notified appellant that the evidence was insufficient to establish her claim. Appellant was instructed to complete a questionnaire regarding the factual element of her claim and also advised of the type of medical evidence needed.

By decision dated February 14, 2014, OWCP denied appellant's claim because medical evidence did not establish that a condition was diagnosed in connection with the claimed work event.

In a March 5, 2014 letter, appellant, through her attorney, requested an oral telephone hearing before an OWCP hearing representative.

In a November 25, 2013 attending physician's report (Form CA-20), Dr. David Neuman, a Board-certified orthopedic surgeon, advised that appellant previously had a right knee arthroscopy which caused a consequential left knee derangement. He checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by employment activity.

In a February 6, 2014 report, Dr. Neuman advised that appellant sustained a work-related twisting injury on November 9, 2013 as she moved a tray of mail to a low shelf. He noted that her left knee began giving out and she over pressured it. Dr. Neuman advised that prior to the injury appellant complained of left knee pain that arose with overuse due to a previous right knee injury at work. On physical examination he found fullness in the left knee in contrast to the right knee, well-healed arthroscopic wounds in the right knee, warmth and fullness noted in the left knee upon palpation, 115 degrees of active flexion the left in contrast to 130 degrees on the right, greater weight bearing to the right side, and clicking when standing from a squatting position. Dr. Neuman assessed internal derangement of the left knee, pain, stiffness, and symptomatic synovitis. He advised that appellant's left knee conditions occurred because of the November 9, 2013 work incident and that it was an exacerbation of a previous osteoarthritis condition.

In an accompanying February 6, 2014 attending physician's report, Dr. Neuman advised that appellant had a twisting and over-impact injury to the left knee. He assessed internal derangement and pain of the left knee and noted that appellant previously sustained an overuse injury to the right knee at work. Dr. Neuman checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by employment activity. He advised that appellant was unable to work and needed physical therapy and stretching. In a May 30, 2014 disability status report, Dr. Neuman advised that appellant was totally incapacitated from February 14 through April 7, 2014.

² The claim for the December 12, 2009 employment injury in claim number xxxxxx299 is not presently before the Board.

In a May 27, 2014 disability status report, Dr. Joyce Goldenberg, a Board-certified physiatrist, advised that appellant was unable to work from April 8 through July 6, 2014. In a June 16, 2014 attending physician's report, she advised that appellant injured her right knee while working as a mail handler at the employing establishment. Dr. Goldenberg checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by the employment incident.

On September 9, 2014 a telephone hearing took place. Counsel argued that Dr. Neuman's February 6, 2014 report was sufficient to establish causal relationship. Appellant clarified that she injured both her right and left knee as a result of the November 9, 2013 employment incident. She explained that her right knee gave out when she bent down to put mail in a bin, causing her to shift her weight to the left knee which then caused the left knee to go out as well.

In a December 2, 2014 decision, an OWCP hearing representative affirmed the denial of appellant's traumatic injury claim because medical evidence in support of causal relationship did not contain adequate medical rationale.

By letter dated February 20, 2014, appellant, through counsel, requested reconsideration. In support of the request, appellant submitted additional evidence. In an October 8, 2014 report, Dr. Eric Sax, a Board-certified diagnostic radiologist, advised that magnetic resonance imaging (MRI) scans of the right knee revealed severe chondromalacia patella and blunted free margin of the anterior horn of the medial meniscus raise with the possibility of a radial tear. A right knee x-ray also from October 8, 2014 was unremarkable.

Multiple progress reports from Dr. Neuman were submitted. In a November 7, 2013 report, Dr. Neuman advised that there was fullness and swelling in the knees and assessed postoperative atrophy, deconditioning, pain, stiffness, and weakness. He noted that the right knee condition occurred because of a December 2009 work injury and requested that the left knee be included as a consequential injury. In a January 27, 2014 report, Dr. Neuman advised that appellant related that she was experiencing increased left knee pain following right knee surgery on October 12, 2011 and that she had a twisting injury to the left knee in November 2013. He noted that appellant had a temporary total disability because of the right knee condition that occurred as a result of the December 12, 2009 work injury. In an October 20, 2014 report, Dr. Neuman evaluated appellant's right knee.

By decision dated March 17, 2015, OWCP denied appellant's request for reconsideration without a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that it 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 Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without opening the case for a review of the merits.⁴

ANALYSIS

In a December 2, 2014 decision, an OWCP hearing representative affirmed the denial of appellant's claim because medical evidence did not establish that the diagnosed conditions were causally related to the alleged work incident. Appellant submitted a timely request for reconsideration received by OWCP on February 20, 2015, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. The underlying issue in this case is whether appellant established that the November 9, 2013 work incident to her right knee caused or contributed to a diagnosed medical condition. This is a medical issue. OWCP's December 2, 2014 decision informed appellant that the medical evidence was insufficient to establish that her right knee condition was caused by the alleged work incident. In support of reconsideration, appellant submitted diagnostic and progress reports. However, these reports do not constitute relevant and pertinent new evidence. As the diagnostic reports do not address causal relationship, they are not relevant to the issue of causation. Dr. Neuman's November 7, 2013 report predates the claimed work injury and his October 20, 2014 report fails to mention the November 9, 2013 work incident. Therefore, they are not relevant to the issue of whether the November 9, 2013 incident caused the diagnosed conditions. Dr. Neuman January 27, 2014 report mentions a twisting injury to the left knee at work in November 2013. However this report is irrelevant because it repeats the content of Dr. Neuman's February 6, 2014 report. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁵

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

CONCLUSION

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

³ *E.K.*, Docket No. 09-1827 (issued April 27, 2010). See 20 C.F.R. § 10.606(b)(3).

⁴ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.606(b).

⁵ *J.P.*, 58 ECAB 289 (2007).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board