

ISSUE

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

FACTUAL HISTORY

On July 28, 2014 appellant, a 57-year-old junior engineer, filed a traumatic injury claim (Form CA-1), alleging that he injured a left knee on July 27, 2014 due to a twisting injury sustained in a cargo pump room while in the performance of duty. He stopped work on July 28, 2014.

A July 28, 2014 chronological record of medical care was submitted indicating that appellant presented with a left knee twisting injury. It noted that appellant was "standing an engineering watch" the night before on July 27, 2014 when he was "stepping down one step onto a step down bar in [a] cargo pump room and twisted his left knee." Appellant heard a pop and cracking sound and felt immediate pain. He was able to complete his watch until 11:30 p.m., went to his room, and iced his knee. Appellant claimed that his edema and pain did not subside and his knee stiffened up through the night causing more discomfort. He stated that his knee locked once and cracked with movement.

An August 6, 2014 x-ray of the left knee demonstrated moderate joint effusion and osteoarthritis. There was no evidence of fracture or dislocation.

In a September 2, 2014 attending physician's report (Form CA-20), Dr. Dirk Proffer, a Board-certified orthopedic surgeon, advised that appellant reinjured his left knee on July 27, 2014 following an original injury and surgery in 1990. He diagnosed end-stage degenerative joint disease and patellar instability of the left knee and recommended a total left knee replacement.

In a September 2, 2014 report, Dr. Proffer advised that appellant complained of a twisting injury two months earlier. He noted that appellant related that it was a workers' compensation injury that occurred as he was transitioning from one platform to another while working onboard a ship at sea. Dr. Proffer assessed degenerative joint disease of the left knee and left patellar instability. He noted that appellant had a prior left knee injury in the 1990's and recommended a total knee replacement.

In a September 2, 2014 diagnostic report, Dr. Proffer advised that a left knee x-ray revealed end-stage arthritis of the left knee with tricompartmental disease.

By letter dated September 22, 2014, OWCP notified appellant of the type of evidence needed to establish his claim. Appellant was also instructed to complete and return a questionnaire establishing the factual element of his claim. He was afforded 30 days from the date of the letter to submit responsive evidence.

An August 6, 2014 emergency department report cosigned by Dr. Stewart Martin, Board-certified in emergency medicine, advised that appellant complained of left leg pain. He assessed knee pain and osteoarthritis and noted that appellant had no history of injury to his leg. A left

knee x-ray revealed moderate joint effusion and osteoarthritis with no definite fracture or dislocation visualized.

By decision dated October 24, 2014, OWCP denied the claim as appellant failed to establish fact of injury. It found that the evidence was insufficient to establish that the alleged work events and injuries occurred as alleged and noted that appellant failed to provide any statement or explanation as to the mechanism of the injury.

Appellant, through counsel, requested reconsideration and resubmitted several reports. In a September 2, 2014 report, Dr. Proffer advised that appellant was not fit for sea duty. He diagnosed left knee pain, swelling, and meniscus tear versus internal derangement. Dr. Proffer found that diagnostic testing revealed arthritic changes on the left knee and recommended a total left knee replacement.

A November 7, 2014 hospital discharge summary was also submitted. It indicated that appellant was status post hospital stay for elective knee surgery due to osteoarthritis and patellar instability for the period October 27 to 30, 2014.

By decision dated January 12, 2015, OWCP denied appellant's request for reconsideration without a merit review finding that he did not submit relevant and pertinent new evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

On September 14, 2015 appellant, through his attorney, requested reconsideration. He resubmitted several reports to OWCP including the July 28, 2014 chronological record of medical care, the August 6, 2014 emergency department report, Dr. Proffer's September 2, 2014 report, and his September 2, 2014 attending physician's report.

By decision dated November 4, 2015, OWCP denied appellant's request for reconsideration without a merit review finding that he did not submit relevant and pertinent new evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.³ OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP 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

³ 5 U.S.C. § 8101 *et seq.* Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

⁴ See *Annette Louise*, 54 ECAB 783, 789-90 (2003).

relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

In an October 24, 2014 merit decision, OWCP denied appellant's claim finding that factual evidence of record was insufficient to establish that the injury and/or event occurred as alleged. Appellant submitted a timely request for reconsideration which was denied on January 12, 2015 without a merit review. He again submitted a timely request for reconsideration on September 14, 2015 which was denied without a merit review on November 4, 2015.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. In support of his September 14, 2015 reconsideration request, appellant resubmitted several reports to OWCP including the July 28, 2014 chronological record of medical care, the August 6, 2014 emergency department report, Dr. Proffer's September 2, 2014 report, and his September 2, 2014 attending physician's report. However, 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.⁸ Furthermore, the evidence submitted in support of reconsideration is not relevant to the underlying issue in the claim. In its October 24, 2014 decision, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the event/injury occurred as alleged. This is a factual issue for which appellant has failed to provide any relevant and pertinent new evidence in support of his claim.

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 he failed to meet one of the standards enumerated under section 8128(a) of FECA, he was not entitled to further merit review of his claim.

CONCLUSION

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

⁵ 20 C.F.R. § 10.606(b)(3). *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Id.* at § 10.608(b).

⁸ *J.P.*, 58 ECAB 289 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2016
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