

appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this claim.

ISSUE

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

FACTUAL HISTORY

On October 19, 2015 appellant, then a 61-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2015 he strained his left leg and left knee when he tripped on a railroad tie in the performance of duty. He stopped work on October 18, 2015.

In an October 5, 2015 report, Dr. Philippe S. Cote, a Board-certified orthopedic surgeon, noted that appellant underwent a total left knee replacement in April 2014 and sustained another left knee injury during a motorcycle accident one month ago. He provided physical examination findings and reported that a left knee magnetic resonance imaging (MRI) scan showed a left total knee arthroplasty and moderate volume joint effusion with synovitis. Dr. Cote diagnosed status post left total knee arthroplasty and left knee pain, status post fall. He concluded that appellant had left knee pain following a recent traumatic injury status post total knee arthroplasty.

Following the October 18, 2015 incident, appellant was initially treated in the emergency room. In hospital records dated October 18, 2015, Dr. Adam Janicki, an emergency medicine physician, related appellant's complaints of sudden onset of left knee pain after a fall at work. Physical examination of appellant's left knee showed decreased range of motion and no obvious swelling. Dr. Janicki diagnosed left knee effusion and recommended that appellant follow-up with his primary care provider.

Dr. Cote indicated in an October 23, 2015 progress note that appellant had been doing well following his left knee total arthroplasty until October 18, 2015 when he tripped at work and injured his left knee. He conducted an examination and opined that appellant clearly had some soft tissue injury given the amount of soft tissue swelling. Dr. Cote provided a work status note, which indicated that appellant was disabled from work for two weeks.

By letter dated November 16, 2015, OWCP informed appellant that his claim was initially approved as a minor injury, but it was being reopened because he had not yet returned to work. It advised him that the evidence submitted was insufficient to establish his claim. OWCP requested that appellant respond to an attached questionnaire in order to substantiate that the October 18, 2015 incident occurred as alleged and provide additional medical evidence to establish a diagnosed condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit additional evidence.

³ 5 U.S.C. § 8101 *et seq.*

Appellant provided an October 20, 2015 witness statement from appellant's coworker, who explained that on October 18, 2015 he heard a loud disturbance and found appellant on the floor when he went to the front section of the office.

Dr. Cote continued to treat appellant. In a November 6, 2015 progress note, he related that appellant still had significant swelling and effusion of his left knee. Dr. Cote noted that appellant remained totally disabled from work. In a December 15, 2015 attending physician's report (Form CA-20), he related that on October 18, 2015 appellant injured his left knee. Dr. Cote reported examination findings of swelling and effusion. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated when he tripped at work.

Appellant filed various claims for wage-loss compensation (Form CA-7) for the period December 3, 2015 to January 8, 2016.

On December 17, 2015 OWCP received appellant's response to its development letter. Appellant explained that on October 18, 2015 he turned to put papers in his file when he tripped on a turn table at work. He noted that his coworker was present in the office. Appellant clarified that he had no disability or symptoms before the alleged employment injury.

OWCP denied appellant's claim by decision dated December 17, 2015. It determined that the factual evidence of record was insufficient to establish that the October 18, 2015 incident occurred as alleged. OWCP also found that the medical evidence of record failed to establish a diagnosed medical condition causally related to the alleged employment incident.

On December 22, 2015 appellant requested a hearing before an OWCP hearing representative. A hearing was held on June 28, 2016. Appellant's representative at the time argued that witness statements confirmed that on October 18, 2015 appellant fell on the floor and was transported to the emergency room. Appellant's representative clarified that, although appellant had prior left knee issues, those issues had resolved, and appellant was doing well following his left knee total replacement until the October 18, 2015 employment injury. Appellant provided photographs of the office where the alleged October 18, 2015 incident occurred and described in detail how he tripped and fell in the performance of duty. OWCP continued to receive medical evidence.

OWCP received a September 18, 2015 report by Dr. Cote who related that on September 8, 2015 appellant was riding his motorcycle when he hyperflexed his left knee. Upon examination of appellant's left knee, Dr. Cote noted 2+ effusion of the knee and point tenderness. He recommended a left knee MRI scan. Appellant also provided a time sheet printout for October 18, 2015.

Appellant underwent a left knee MRI scan by Dr. Krishanu B. Gupta, a diagnostic radiologist, who indicated in a September 29, 2015 report that appellant had left total knee arthroplasty, intact quadriceps tendon insertion, and moderate volume joint effusion with synovitis.

In a March 23, 2016 report, Dr. Cote discussed appellant's history of his left knee symptoms and related that on October 18, 2015 he injured his left knee again when he tripped at work. He indicated that he examined appellant on October 23, 2015 and noted that it was clear

that appellant had sustained a significant soft tissue injury. Dr. Cote described the medical treatment he provided for appellant. He opined that appellant sustained a new injury to his left knee. Dr. Cote explained that appellant's injury was an injury to the iliotibial band, and not to the knee itself. He reported that the new injury was unrelated to his prior issues with left knee arthritis and subsequent left knee replacement.

Appellant submitted various handwritten witness statements dated June 23, 2016, which described how the floor in the front office of the employing establishment had a metal beam that was slightly raised above the floor that required being grinded down and covered with a floor leveler.

By decision dated September 7, 2016, an OWCP hearing representative affirmed the December 17, 2015 decision with modification. She accepted that the October 18, 2015 incident occurred as alleged, but found that the medical evidence of record was insufficient to establish a diagnosed left knee condition causally related to the accepted incident.

On September 24, 2016 appellant requested reconsideration. He indicated that he was providing new medical evidence from Dr. Cote, which affirmed a causal relationship between the October 18, 2015 employment injury and his left knee condition.

In a September 14, 2016 addendum report, Dr. Cote clarified that, although appellant had a left knee injury after a motorcycle accident, he was in a "normal state of good health when he tripped on a railroad track that was batted in the floor." He related that this caused appellant to twist and fall on his left knee, which caused a new injury on October 18, 2015.

By decision dated October 21, 2016, OWCP denied further merit review of appellant's claim under 5 U.S.C. § 8128(a). It found that Dr. Cote's September 14, 2016 addendum report was cumulative and substantially similar to his previously submitted report.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

In its September 7, 2016 decision, OWCP again denied appellant's traumatic injury claim, finding that the medical evidence of record failed to establish that his left knee condition was causally related to the accepted October 18, 2015 employment incident. Appellant subsequently requested reconsideration and submitted additional medical evidence.

The Board finds that OWCP properly declined to reopen appellant's claim for further consideration of the merits, under 5 U.S.C. § 8128(a).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; appellant has not advanced a relevant legal argument not previously considered by OWCP; and appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP.

In support of his reconsideration request, appellant submitted a September 14, 2016 addendum report by Dr. Cote. Dr. Cote reiterated that appellant sustained a new injury on October 18, 2015 when he twisted and fell on his left knee at work. He further explained that, although appellant had sustained a previous left knee injury, he was in a "normal state of good health when he tripped on a railroad track that was batted in the floor." The Board notes that Dr. Cote merely repeated his opinion from his March 23, 2016 report that appellant sustained a new left knee injury on October 18, 2015. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.⁹

On appeal counsel contends that OWCP incorrectly refused to review the merits of appellant's case because Dr. Cote's September 14, 2016 addendum report directly addressed the issue of causal relationship, which OWCP's hearing representative found was lacking. As explained above, however, Dr. Cote's opinion on causal relationship in the new September 14, 2016 report merely duplicates his opinion found in the March 23, 2016 report, which was previously reviewed by OWCP.

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *E.M.*, Docket No. 09-0039 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

The Board finds, therefore, that appellant has not met any of the regulatory requirements and OWCP properly declined his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).¹⁰

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).