

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 September 5, 2014 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right knee and bilateral hip conditions due to 31 years of continuous work-related activities. In an attached statement dated September 4, 2014, he alleged that his condition may have developed due to the mounting and dismounting of his delivery vehicle at least 100 times on a daily basis, along with carrying of packages between 25 and 50 pounds. Appellant did not indicate on the claim form that he had stopped work.

In a report dated September 2, 2014, Dr. Charles Herring, a Board-certified orthopedic surgeon, examined appellant and diagnosed a subchondral fracture of the medial femoral condyle of the right knee, medial meniscal tear of the right knee, and bilateral hip osteoarthritis. He opined that the cause of appellant's subchondral fracture and meniscal pathology were related to entering and exiting his postal vehicle for many years, causing an axial torsional load and repetitive strain.

On September 4, 2014 Dr. Edward Mittleman, a family medicine physician, examined appellant and diagnosed subchondral fracture of the right knee, medial meniscus tear of the right knee, right hip osteoarthritis, and bilateral hip chondromalacia. He explained in detail the duties of appellant's position as a letter carrier, including casing mail, bundling mail into trays, pushing a loaded hamper of mail onto his postal vehicle, and delivering mail. Dr. Mittleman opined that appellant's employment duties had placed significant forces on his knee and thigh, noting the biomechanical processes involved resulting in appellant's conditions. He stated that "it is medically reasonable to infer a direct causal relationship between the activities that [appellant] performs for [the employing establishment] and the pathology and symptomatology that he is presently suffering."

On October 21, 2014 OWCP referred appellant for an appointment with a second opinion physician, Dr. Steven Ma, a Board-certified orthopedic surgeon. In a report dated November 10, 2014, Dr. Ma related that he examined appellant and diagnosed bilateral hip osteoarthritis, tear of the medial meniscus of the right knee, and a subchondral fracture of the medial tibial plateau of the right knee. He found that none of appellant's diagnosed conditions were related to duties of his federal employment. Dr. Ma reasoned that, while there was objective evidence of advanced arthritis of appellant's hips, his usual and customary work duties would not cause him to develop arthritis. He further explained that appellant's knee conditions were due to acute specific traumatic injuries, rather than cumulative trauma, and that appellant had not alleged a specific work-related traumatic event that could have resulted in his diagnosed conditions.

On March 3, 2015 OWCP issued two decisions. In the first decision, it accepted appellant's medial meniscal tear of the right knee as work related, noting that, while Dr. Ma opined that the tear could only have resulted from an acute incident of trauma, Dr. Mittleman gave a description of work factors that could have resulted in the tear. In the second decision, OWCP denied appellant's claim for a right knee fracture, bilateral hip osteoarthritis, and hip

chondromalacia. It explained that the opinions of Drs. Mittleman and Herring did not provide sufficient rationalized medical explanations regarding the cause of these conditions as related to factors of appellant's federal employment. Dr. Ma, however, provided sufficient rationale to explain why these conditions were not work related.

On April 6, 2015 appellant requested reconsideration of OWCP's March 3, 2015 decision denying his claim. In an accompanying report dated March 13, 2015, Dr. Mittleman explained that appellant's bilateral hip chondromalacia and osteoarthritis were related to factors of appellant's federal employment. He explained the biomechanical process which caused appellant's conditions, and requested that OWCP accept appellant's claim for bilateral hip osteoarthritis and chondromalacia.

In a report dated March 25, 2015, Dr. Hosea Brown, III, an internal medicine physician, requested that OWCP accept appellant's claim for aggravation/acceleration of osteoarthritis of the bilateral hips. He explained that Dr. Ma's opinion of appellant's osteoarthritis being nonwork related was in error because the condition was aggravated and accelerated by factors of appellant's employment. Dr. Brown listed factors, including carrying mail and entering/exiting his postal vehicle, and explained the biomechanical process alleged to have aggravated and accelerated appellant's condition.

In a report dated May 5, 2015, Dr. Herring commented on Dr. Ma's second opinion report, noting that, while aging did cause degenerative changes to the articular cartilage, appellant's work activities as a letter carrier, including entering/exiting his postal vehicle, hastened the degenerative process.

By decision dated July 23, 2015, OWCP reviewed the merits of appellant's claim and denied modification of the decision dated March 3, 2015. It found that the weight of medical evidence remained with Dr. Ma, and that neither Drs. Herring nor Mittleman provided sufficient rationale to establish a causal connection between appellant's claimed conditions and factors of his federal employment.

On September 29, 2015 appellant requested reconsideration of OWCP's July 23, 2015 decision. With his request, he submitted a report from Dr. Herring dated July 28, 2015, in which Dr. Herring formally requested a referee evaluation. Dr. Herring noted that there remained a conflict of medical evidence between himself and Dr. Ma. Appellant also submitted a report from Dr. Brown dated September 22, 2015 in which Dr. Brown similarly requested a referee evaluation, noting that both he and Dr. Herring strongly disagreed with Dr. Ma's report, inferring that Dr. Ma's report had been biased and insufficiently reasoned.

By decision dated December 17, 2015, OWCP reviewed the merits of appellant's claim and denied modification of the decision dated July 23, 2015. It found that, although work duties and mechanisms of injury had been explained in the reports of appellant's treating physicians, those alone were not enough to substantiate that work factors were the cause of appellant's conditions because other factors had not been ruled out. OWCP found that the weight of medical evidence continued to be held by Dr. Ma's report dated November 10, 2014.

On March 29, 2016 appellant requested reconsideration of OWCP's December 17, 2015 decision. With his request, he submitted reports from Dr. Brown dated November 24, 2015 and February 23, 2016. In both reports, Dr. Brown reiterated his diagnoses of bilateral hip osteoarthritis and chondromalacia, and explained that he felt a conflict of medical opinion remained between his opinion and that of Dr. Ma. He reiterated that he felt that Dr. Ma's report was biased. By letter dated February 23, 2016, Dr. Brown argued that OWCP's refusal to direct appellant to a referee examination was inconsistent with the law and again requested that appellant be sent for such an examination. In a statement from a union representative dated March 16, 2016, the representative requested that either appellant's claim be accepted as establishing causal relationship or an impartial medical examination be ordered due to a conflict of medical opinion. In a narrative statement dated March 21, 2016, appellant also alleged that OWCP's claims examiner had rendered a medical opinion in his decision when he was not qualified to do so.

By decision dated April 11, 2016, OWCP declined to review the merits of appellant's claim. It noted that the role of the claims examiner was to determine the relative value of opposing opinions in the medical record, and that appellant's physicians' beliefs that there was a conflict of medical opinion was insufficient to create a conflict of medical opinion. OWCP found that the evidence submitted on reconsideration was cumulative and thus substantially similar to evidence previously considered.

On December 14, 2016 OWCP received appellant's request for reconsideration of OWCP's December 17, 2015 decision. With his request, he submitted a medical report from Dr. Brown dated August 23, 2016 in which Dr. Brown diagnosed appellant with bilateral hip osteoarthritis and chondromalacia, and noted that he had previously requested that appellant's claim be accepted or sent for a referee evaluation. In a report dated October 11, 2016, Dr. Herring reiterated his opinion that appellant's repetitive heavy lifting could reasonably have caused appellant's accelerated degenerative disease, provided scientific studies finding correlation between heavy physical workload and the occurrence of hip osteoarthritis, and described the work factors which caused appellant's conditions. Along with this medical evidence, appellant attached a handwritten letter dated July 27, 2016 explaining the relationship between arthritis and trauma and disputed the findings of Dr. Ma.

By decision dated March 10, 2017, OWCP declined to review the merits of appellant's claim. It found that the medical evidence submitted on reconsideration was substantially similar to prior evidence of record.

LEGAL PRECEDENT

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits. To require OWCP to reopen a case for merit review under section 8128(a), OWCP's 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 relevant legal argument not previously considered by OWCP; or (3) constitute

relevant and pertinent new evidence not previously considered by OWCP.³ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁴

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim.

In his December 14, 2016 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish causal relationship between factors of his federal employment and his diagnosed right knee fracture, bilateral hip osteoarthritis, and hip chondromalacia. Appellant submitted two reports from Dr. Brown which reiterated his previous diagnoses of bilateral hip osteoarthritis and chondromalacia. He also indicated that Dr. Ma was biased and that a conflict in medical opinion was created and was in need of resolution. These reports, although new, are a restatement of Dr. Brown's previous findings. Similarly, Dr. Herring's report of October 11, 2016 is also a reiteration of Dr. Mittleman's previous findings. He continued to relate that appellant's repetitive physical duties caused accelerated degenerative disease and hip osteoarthritis. As in his earlier report, he further cited studies supporting that heavy work increased the risk of hip osteoarthritis, which he believed were applicable to appellant's case. 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.⁵ Therefore, the Board finds that this evidence is insufficient to require further merit review.

Appellant also submitted an extensive letter outlining his medical history and his belief that his conditions were caused by repetitive work duties and cited web addresses as his references. As a lay person, appellant is not competent to render a medical opinion⁶ and, therefore, it is not new and relevant evidence sufficient to require further merit review.

Accordingly, as appellant's request for reconsideration did not meet the criteria for reopening his case, the Board finds that OWCP properly denied merit review.

³ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

⁴ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

⁵ *E.M.*, Docket No. 09-0039 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

⁶ *See James A. Long*, 40 ECAB 538 (1989).

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 March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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