United States Department of Labor
Employees' Compensation Appeals Board

B.A., Appellant	)	
and	)	**Docket No. 18-0404**
	)	**Issued: September 4, 2018**
U.S. POSTAL SERVICE, MANOR STATION, Winston-Salem, NC, Employer	)	

Appearances:
Appellant, pro se
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 December 18, 2107 appellant filed a timely appeal from a June 19, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] As more than 180 days has elapsed from the last merit decision dated November 9, 2016, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

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

[1] A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period from the June 19, 2017 decision expired on Saturday, December 16, 2017. If the last day to file an appeal is on a Saturday, Sunday, or federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). The appeal in this case, received by the Board on December 18, 2017, is therefore timely with respect to the June 19, 2017 decision.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 26, 2015 appellant, then a 25-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2015 she dislocated her left kneecap when she slipped and fell on ice walking down a driveway while in the performance of duty. She stopped work on February 24, 2015 and returned on February 27, 2015.

The employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16) dated February 26, 2015 which, indicated that she was authorized to seek medical treatment for a knee dislocation from a February 21, 2015 injury.

In a February 26, 2015 disability statement, Courtney Andersen, a certified physician assistant, provided work restrictions and opined that appellant was partially disabled beginning February 27, 2015. On February 26, 2015 she detailed her medical and injury history. Ms. Andersen noted appellant's left knee physical examination findings, reviewed appellant's x-rays, and related a diagnosis of left knee pain.

In a March 25, 2015 report, Dr. Michael D. Lauffenburger, an attending Board-certified orthopedic surgeon, reported that appellant was seen for left knee pain. He provided examination findings and noted that she injured her left knee when she slipped on ice. Dr. Lauffenburger indicated that appellant was to be off work for six weeks.

In disability statements dated March 25, April 22, and May 11, 2015, Dr. Lauffenburger, diagnosed recurrent patellar dislocation, which he opined had been aggravated by the February 21, 2015 employment incident.

In a May 27, 2015 attending physician's report (Form CA-20), Dr. Lauffenburger noted that appellant injured her left knee on February 21, 2015 when she slipped and fell on ice while delivering mail. He provided examination findings and diagnosed recurrent patellar dislocation. Dr. Lauffenburger indicated that appellant would be totally disabled during the period March 25 to July 20, 2015.

In a development letter dated July 14, 2015, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as it appeared to involve only a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim had been reopened for consideration of the merits. OWCP informed her that the evidence of record was insufficient to establish her traumatic injury claim and advised her of the medical and factual evidence needed. It afforded appellant 30 days to submit the necessary evidence.

In a July 20, 2015 duty status report (Form CA-17), Dr. Lauffenburger noted an injury date of February 21, 2015 and diagnosed recurrent patellar dislocation. He released appellant to return to work that day with restrictions.

In an August 5, 2015 report, Dr. Lauffenburger related that appellant had prior surgery for left patellar dislocation and that the February 21, 2015 injury prolonged the healing process and aggravated the condition. He concluded that her fall on ice caused her patella dislocation.

By decision dated August 28, 2015, OWCP denied appellant's claim. It accepted that the February 21, 2015 incident occurred as alleged and that appellant had a diagnosed medical condition, but denied appellant's claim because the medical evidence submitted was insufficient to establish a medical condition or injury causally related to the accepted employment incident.

In a September 2, 2015 report, Dr. Lauffenburger diagnosed recurrent left knee patellar instability and released her to return to light-duty work.

In a letter and form dated October 15, 2015, received on October 22, 2015, appellant requested reconsideration and submitted a September 29, 2015 report by Dr. Lauffenburger in support of her request.

Dr. Lauffenburger, in the September 29, 2015 report, noted that appellant was seen for a follow-up visit for her patellar dislocation and noted that she had returned to light-duty work. Examination findings for the left knee were given. Dr. Lauffenburger opined that appellant's fall and striking her knee against a firm object on February 21, 2015 clearly caused her patellar dislocation and injury.

On November 4, 2015 Dr. Lauffenburger diagnosed recurrent patellar dislocation due to a February 21, 2015 injury. He noted that appellant was capable of light-duty work, but not full duty. Physical examination findings were provided.

By decision dated December 10, 2015, OWCP denied modification of its August 28, 2015 decision as it found the medical evidence of record failed to provide a rationalized opinion explaining how the diagnosed condition was causally related to the accepted February 21, 2015 employment incident.

In a February 24, 2016 report, Dr. Peter G. Dalldorf, an examining Board-certified orthopedic surgeon, diagnosed left knee patellofemoral instability with history of reconstruction. He noted that appellant had a history of knee dislocation beginning in 2009, she had surgery in 2011, and was doing well until slipping and falling on ice at work on February 21, 2015. Appellant related that her knee dislocated laterally on February 21, 2015 when she slipped and fell. Diagnostic testing revealed significant patellar tilt with no significant degenerative changes. Dr. Dalldorf opined that appellant disrupted the surgical repair due to the February 21, 2015 fall. He further noted that she has suffered three dislocations since her surgical repair.

On March 14, 2016 OWCP received appellant's form requesting reconsideration dated March 9, 2016.

By decision dated June 1, 2016, OWCP denied modification as Dr. Dalldorf failed to provide a rationalized opinion explaining the causal relationship between the diagnosed condition and the accepted February 21, 2015 employment incident.

On August 15, 2016 appellant requested reconsideration and submitted a July 27, 2016 report from Dr. Dalldorf.

Dr. Dalldorf, in his July 27, 2016 report, diagnosed left knee patellofemoral instability with history of reconstruction. He attributed the recurrent patellofemoral instability to her February 21,

2015 workplace fall. Dr. Dalldorf further opined that the February 21, 2015 fall permanently aggravated appellant's preexisting left knee condition and caused recurrent instability.

By decision dated November 9, 2016, OWCP denied modification, finding the medical evidence of record insufficient to establish causal relationship.

On December 29, 2016 appellant requested reconsideration. She disagreed with OWCP's finding that she had failed to establish causal relationship as both physicians attributed her condition to the February 21, 2015 work incident.

In a January 16, 2017 Form CA-17, Dr. Dalldorf diagnosed patellofemoral instability, which he attributed to the February 21, 2015 slip and fall on ice. Work restrictions were provided.

By decision dated March 8, 2017, OWCP denied reconsideration of the merits of appellant's claim. It found that she had not shown that she met the requirements of 5 U.S.C. § 8128(a) sufficient to warrant merit review.

On June 7, 2017 appellant requested reconsideration. In support of her claim, she resubmitted reports dated March 25, June 5, and September 29, 2015 by Dr. Lauffenburger, and reports dated February 24 and July 27, 2016 by Dr. Dalldorf. Appellant also submitted her statement and referenced a new report by Ms. Andersen, which was not received. In her statement she argued that medical evidence submitted was sufficient to establish causal relationship and her claim.

By decision dated June 19, 2017, OWCP denied reconsideration of the merits of appellant's claim. It found that she had not shown that she met the requirements of 5 U.S.C. § 8128(a) sufficient to warrant merit review as the submitted evidence was repetitious and previously considered.

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 compensation at any time on his own motion or on application.[3]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (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.[4]

[3] 5 U.S.C. § 8128(a); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

[4] 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 be received by OWCP within one year of the date of OWCP's decision for which review is sought.[5] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[6] 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.[7]

ANALYSIS

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

In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered. She argued that her injury was employment related and described the February 21, 2015 employment incident and her treatment.[8] The underlying issue in this case was whether appellant sustained left knee dislocation causally related to the accepted February 21, 2015 employment incident. This is a medical issue which must be addressed by pertinent and relevant medical evidence.[9] Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Appellant failed to submit relevant and pertinent new medical evidence in support of her claim.[10] In support of her claim, appellant resubmitted medical reports from Dr. Lauffenburger and Dr. Dalldorf, which were previously submitted and reviewed by OWCP. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.[11] A claimant may obtain a merit review of an OWCP decision by submitting relevant and pertinent new evidence. In this case, appellant did not submit any relevant and pertinent new medical evidence.[12]

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). 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

[5] *Id.* at § 10.607(a).

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

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

[8] *Sherry A. Hunt*, 49 ECAB 467 (1998).

[9] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[10] *Id.*

[11] *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

[12] *M.H.*, Docket No. 13-2051 (issued February 21, 2014); *M.C.*, Docket No. 14-0021 (issued March 11, 2014).

constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[13]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 19, 2017 is affirmed.

Issued: September 4, 2018
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

[13] The Board notes that a Form CA-16 authorization for examination and/or treatment was issued by the employing establishment on February 26, 2015. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee s claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).