



## 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 July 18, 2016 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that his "knees were bone on bone and became to the point of having to be replaced" due to factors of his federal employment. He indicated that he previously had surgeries on both knees and that he had a letter from his doctor opining that it was job related. Appellant first became aware of his condition in 2006 or 2007 and first realized it was employment related on February 25, 2016. He stopped work on April 5, 2016.

OWCP received a July 20, 2016 duty status report (Form CA-17) from an unknown provider who indicated that appellant could work with specified restrictions and included a notation, which is mostly illegible.

Appellant recounted in a statement dated August 11, 2016 that in 2003 he had right knee surgery while working for the employing establishment, but he did not file a workers' compensation claim. He related that in 2006/2007 he had left knee surgery, which was accepted as work related by OWCP. Appellant indicated that he was filing the current claim because on April 5, 2016 he had double knee replacement surgery and he believed the surgery was a result of his work for the employing establishment. He described his employment duties as park and loop delivery routes, "hopping for business," curbside, and standing for cluster boxes. Appellant noted that the long-life vehicle (LLV) was cramped for taller people while driving. He further related that his route had many apartments that required hopping and climbing stairs.

In an August 18, 2016 development letter, OWCP acknowledged receipt of appellant's claim and the accompanying evidence. It advised him of the need for medical evidence in support of his claim. OWCP also provided appellant a factual questionnaire to complete and return. It afforded him 30 days to submit the requested medical evidence and factual information.

OWCP received an attending physician's report (Form CA-20) dated August 9, 2016 by Dr. William Beauchamp, an orthopedic surgeon, who noted a diagnosis of osteoarthritis of the knee. He checked a box marked "yes" indicating that he believed the diagnosed condition was caused or aggravated by the employment activity. Dr. Beauchamp indicated that appellant underwent bilateral total knee arthroplasty.

On September 2, 2016 OWCP received appellant's response to its development letter. Appellant related that his job duties included standing to case mail, lifting tubs and bundles of mail from the floor to the ledge of the case, lifting parcels weighing up to 70 pounds, and loading and unloading a hamper for 1 to 2½ hours per day. He indicated that for 5 to 6 hours per day he delivered mail, which required sitting, driving, hopping in and out of the mail truck to deliver mail inside a business and parcels or accountable mail to a customer's door, moving trays of mail weighing 10 to 50 pounds, and climbing in and out of the back to retrieve parcels for delivery. Appellant further noted that for 45 minutes to 1 hour per day he walked and hopped apartment

complexes, climbing two flights of stairs to deliver parcels. He explained that he had very little to no activities outside of his federal employment due to the pain he experienced for several years. Appellant also clarified that he was claiming an occupational disease. He reported that the problem he had and the lead up to the surgery on April 5, 2015 began around the time of injury of his 2007 claim. Appellant provided a city letter carrier position description.

By decision dated September 27, 2016, OWCP denied appellant's occupational disease claim. It accepted his employment duties as a city letter carrier and the diagnosis of bilateral knee osteoarthritis, but denied his claim because the medical evidence submitted was insufficient to establish that his current bilateral knee condition was causally related to his federal employment duties.

On November 21, 2016 appellant requested reconsideration.

In a November 16, 2016 letter, Dr. Beauchamp related that appellant was his patient who required bilateral knee replacement. He opined that appellant's condition of bilateral advanced knee arthritis was consistent with and caused by the repetitive activities of his employment.

By decision dated December 28, 2016, OWCP denied modification of the September 27, 2016 decision.

On June 26, 2017 appellant again requested reconsideration.

In a June 19, 2017 letter, Dr. Beauchamp indicated that appellant's job as a city letter carrier required prolonged standing for two to four hours casing mail, lifting packages, prolonged walking, delivering mail, climbing multiple flights of stairs, and climbing in and out of postal vehicles. He noted that appellant had been performing these duties for upwards of 8 to 10 hours a day for five to six days a week since August 2001. Dr. Beauchamp reported that "prior arthroscopic surgery on both knees along with his Postal Service job requirements have contributed and resulted in bilateral knee degeneration and subsequent knee arthroplasty."

By decision dated August 8, 2017, OWCP denied modification of the December 28, 2016 decision.

On October 10, 2017 appellant requested reconsideration. No additional evidence was received by OWCP.

By decision dated October 13, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

## 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> 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.<sup>8</sup>

## ANALYSIS

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

Appellant did not submit any additional argument or evidence along with his October 10, 2017 reconsideration request. Accordingly, the Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered by OWCP or submitted relevant and pertinent new evidence not previously considered by OWCP. The Board finds, therefore, that appellant has not met any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3) and OWCP properly denied his request for reconsideration of the merits of his claim under 20 C.F.R. § 10.608.<sup>9</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 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).

<sup>6</sup> 20 C.F.R. § 10.607(a).

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

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

<sup>9</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

**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 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2019  
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