

**United States Department of Labor
Employees' Compensation Appeals Board**

<hr/>)	
T.T., Appellant)	
)	
and)	Docket No. 18-1682
)	Issued: February 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Springfield, TN, Employer)	
<hr/>)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 4, 2018 appellant, through counsel, filed a timely appeal from a March 21, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated December 18, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 21, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 1, 2017 appellant, then a 36-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury that day when his right leg and knee buckled after turning around while in the performance of duty. In support of his claim, he submitted medical evidence, including an October 25, 2017 report from Dr. Robert Landsberg, a Board-certified orthopedic surgeon, who indicated that appellant was injured at work on September 1, 2017. Dr. Landsberg diagnosed internal derangement of right knee, pain in right knee, history of arthroscopic knee surgery, "tear of medial meniscus of right knee, unspecified tear type, unspecified whether old or current tear, subsequent encounter," and chondromalacia patellae, right knee.

By decision dated December 18, 2017, OWCP denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted September 1, 2017 employment incident.

Appellant resubmitted the October 25, 2017 report from Dr. Landsberg on January 8, 2018.

On February 16, 2018 appellant requested reconsideration. He submitted a narrative statement dated February 8, 2018 reiterating the factual history of his claim and indicating that he went to a doctor as suggested by OWCP, who opined that he needed surgery. Appellant later submitted a March 2, 2018 report from Dr. Landsberg who reiterated his diagnoses.

By decision dated March 21, 2018, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or

⁴ This section provides in pertinent part: "[t]he 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).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,⁹ and the submission of evidence or argument, which does not address the particular issue involved, does not constitute a basis for reopening a case.¹⁰

ANALYSIS

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).

Appellant's February 16, 2018 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. In support of his reconsideration request, appellant submitted a narrative statement reiterating the factual history of his claim and indicating that he went to a doctor suggested by OWCP, who opined that he needed surgery. The Board finds that the submission of this argument did not require reopening appellant's case for merit review because, in its December 18, 2017 merit decision, OWCP had found that the medical evidence was insufficient to establish causal relationship. Appellant's submission of this narrative statement fails to constitute a new argument regarding the underlying issue of causal relationship between his right knee conditions and the accepted September 1, 2017 employment incident. Thus, the Board finds that appellant has not advanced a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit relevant and pertinent new evidence not previously considered by OWCP. Along with his reconsideration request, he resubmitted an October 25, 2017 report from Dr. Landsberg. Appellant subsequently submitted a report from Dr. Landsberg dated March 2, 2018 which merely reiterated his diagnoses. The Board finds that submission of these reports did not require reopening appellant's case for merit review. As OWCP denied appellant's claim based on the lack of supportive medical evidence establishing causal relationship, and Dr. Landsberg's reports repeat evidence already in the case record, they are duplicative and cumulative and fail to constitute relevant and pertinent new evidence.¹¹ Therefore, this evidence is insufficient to require OWCP to reopen appellant's claim for consideration of the

⁷ 20 C.F.R. § 10.606(b)(3).

⁸ *Id.* at § 10.608(a), (b).

⁹ *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁰ *C.B.*, Docket No. 18-1108 (issued January 2, 2019); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹¹ *Supra* note 9.

merits.¹² Thus, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

As appellant's request for reconsideration failed to meet any of the criteria under 20 C.F.R. § 10.606(b)(3), the Board accordingly finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 20 C.F.R. § 10.608.

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 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹² See *L.H.*, 59 ECAB 253 (2007).