

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

A.H., Appellant	)	
	)	
and	)	Docket No. 19-1731
	)	Issued: March 23, 2020
U.S. POSTAL SERVICE, POST OFFICE,	)	
Philadelphia, PA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 16, 2019 appellant timely filed an appeal from a June 10, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> As more than 180 days has elapsed from the last merit decision dated June 14, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's case.

**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).

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<sup>1</sup> Appellant indicated in his appeal request form that he was requesting reconsideration of an April 16, 2018 OWCP decision. The Board notes, however, that the record does not contain a final adverse decision issued by OWCP on that date. The only final adverse decision of OWCP issued within 180 days of this appeal and, therefore, within the Board's jurisdiction is the decision dated June 10, 2019.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 17, 2018 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2018 he sustained an injury to his right knee while in the performance of duty. He explained that he sprained his right knee when he tripped on the carpet while descending steps inside the vestibule of a residence. Appellant stopped work on April 18, 2018 and returned to work on April 19, 2018.

In an April 16, 2018 statement, appellant reiterated the history of the claimed injury.

In an April 17, 2018 work status report, Elizabeth Kraig, a nurse practitioner, noted that appellant reported a sharp pain in his right knee after he twisted it coming down the steps and falling. In a duty status report (Form CA-17) of even date, she diagnosed “right knee S/S[sprain/strain] and described her clinical findings as right knee pain. Ms. Kraig also made recommendations for work restrictions consistent with sedentary work.

In an April 23, 2018 work status report, Dr. Martin Pieretti, Board-certified in internal medicine, noted that appellant described feeling a sharp pain in his right knee after he twisted it while descending steps and falling. In a Form CA-17 of even date, he described appellant’s injury as tenderness in the right knee patella tendon and diagnosed acute strain of the right knee.

In another Form CA-17 of even date, Dr. Pieretti indicated a “right knee S/S” was again diagnosed and appellant was recommended to return to work at a full-time status the next day.

In a development letter dated May 10, 2018, mailed to appellant’s address of record, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It asked him to complete a questionnaire and provide further details regarding the circumstances of the claimed June 28, 2015 employment injury. OWCP also requested a narrative medical report from appellant’s treating physician, which provided a rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. It afforded appellant 30 days to submit the necessary evidence. Appellant provided no further evidence.

By decision dated June 14, 2018, OWCP denied appellant’s claim. It found that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical condition and the accepted employment incident. OWCP mailed the decision to appellant’s address of record.

In an April 9, 2019 statement, appellant indicated that he did not receive OWCP’s May 10, 2018 development letter, nor its June 14, 2018 decision. He requested a copy of both documents so that he could properly appeal OWCP’s decision. Appellant’s reconsideration request contained a new address.

On May 10, 2019 appellant requested reconsideration of OWCP’s June 14, 2018 decision.

In an April 17, 2018 authorization for examination and/or treatment (Form CA-16), appellant’s supervisor described his April 16, 2018 injury as a sprained knee.

Appellant also submitted copies of work status reports and resubmitted Form CA-17s dated April 17 and 23, 2018, previously of record. In an April 26, 2018 work status report, Ms. Kraig again noted appellant's diagnosis of an acute strain of his right knee caused when he experienced sharp pain in his right knee after twisting it while coming down the steps and falling on April 16, 2018.

By decision dated June 10, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim.

### **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>3</sup>

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.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</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>7</sup>

### **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).

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<sup>3</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *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).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit 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.

<sup>6</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Appellant filed a timely request for reconsideration on August 16, 2019,<sup>8</sup> but he did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).<sup>9</sup>

Appellant also failed to submit relevant and pertinent new evidence in support of his August 16, 2019 request for reconsideration. In its June 14, 2018 decision, OWCP denied his claim finding that the evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted April 17, 2018 employment incident. Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> Appellant provided an April 26, 2018 work status report from Ms. Kraig, a nurse practitioner, in which she noted her diagnosis of an acute strain of his right knee. The Board notes that health care providers such as nurse practitioners, physician assistants and physical therapists are not physicians under FECA.<sup>11</sup> Thus, Ms. Kraig's opinion on causal relationship does not constitute a rationalized medical opinion and has no weight or probative value.<sup>12</sup>

The April 17, 2018 Form CA-16 from appellant's supervisor indicating that appellant sprained his knee on April 16, 2018. As noted above, the underlying issue in this case is causal relationship and must be addressed by relevant and pertinent new medical evidence.<sup>13</sup> For this reason, the April 17, 2018 Form CA-16 is insufficient to warrant reopening appellant's claim for further merit review.

Additionally, appellant resubmitted Form CA-17s which were previously reviewed by OWCP. However, the submission of this evidence does not require reopening of appellant's case for review on the merits as the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>14</sup>

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<sup>8</sup> *Supra* note 5; *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

<sup>9</sup> *Supra* note 4.

<sup>10</sup> *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

<sup>11</sup> 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

<sup>12</sup> *See A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *T.H.*, Docket No. 19-0992 (issued February 4, 2020); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

Because appellant did not provide any relevant and pertinent new evidence, appellant is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>15</sup>

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**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 June 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> 20 C.F.R. § 10.606(b)(3)(iii).