

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

R.E., Appellant)	
)	
and)	Docket No. 21-0172
)	Issued: June 15, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Casper, WY, Employer)	
)	

Appearances:
David G. Miller, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 23, 2020 appellant, through her representative, filed a timely appeal from a May 28, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated May 22, 2019, 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.

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.*

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).

FACTUAL HISTORY

On April 15, 2019 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral knee osteoarthritis due to factors of her federal employment. She reported that she first became aware of her condition and first realized it was caused or aggravated by factors of her federal employment on August 21, 2017. Appellant indicated that she had undergone surgery for a meniscus tear in the right knee and initially thought that it would fix her injury, but after a couple of months, her condition worsened as she continued to work. She did not stop work.

In an undated statement, appellant noted that she had been working as a letter carrier at the employing establishment for 20 years. She explained that her most recently assigned route had approximately 500 stops and that she was used to walking eight miles a day when delivering mail. Appellant also noted that she had meniscus tear surgery on her left knee several years prior and she began to have pain in her right knee afterward, causing her to undergo right knee meniscus tear surgery in 2017. She asserted that at the time of her right knee surgery, while her doctor had informed her that her condition was work related, she believed that surgery would fix her condition and did not think to file a claim. Appellant noted that she healed well and returned to work on full-time duty. However, after a few months, she experienced new problems with both knees, including extreme discomfort and difficulty walking. Appellant alleged that she could no longer participate in many everyday activities that she used to enjoy. She noted that her work duties included casing, sorting, and delivering mail, magazines, and flats, which required standing for two to three hours a day, walking and dismounting from her vehicle for three to seven hours a day, sitting while driving and retrieving mail, lifting and carrying parcels up to a maximum of 70 pounds, pushing and pulling five to 20 pounds of tubs, and grasping, as well as reaching above the shoulder level. Appellant stated that she had approximately 550 deliveries each day. She also picked up outgoing mail along her route all day.

In an April 18, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

An August 21, 2017 x-ray of the right knee revealed no abnormal findings.

In an August 21, 2017 medical report, Dr. Richard L. Stowell, an orthopedic surgeon, noted that appellant presented with right knee pain. Appellant reported to him that her knee pain had been ongoing for about a week and indicated that she had a history of low back pain. She also reported that she felt a pop and her pain had been increasing. Dr. Stowell indicated that appellant

had a history of meniscal tear, which was treated by partial meniscectomy. He conducted a physical examination and diagnosed right knee pain.

An August 29, 2017 magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated an oblique tear of the posterior horn of the medial meniscus, small knee joint effusion, patellar chondromalacia, and a small ganglion cyst superficial to the medial collateral ligament.

In an August 30, 2017 medical report, Dr. Stowell conducted a physical examination, reviewed the August 29, 2017 MRI scan of the right knee, and diagnosed medial meniscal tear in the right knee.

In a September 20, 2017 medical report, Dr. Stowell indicated that appellant was scheduled to undergo a right knee partial meniscectomy. He again diagnosed medial meniscal tear in the right knee.

In a November 8, 2017 medical report, Dr. Stowell indicated that appellant underwent a right knee arthroscopic partial medial meniscectomy on October 3, 2017.

An October 15, 2018 x-rays of the bilateral knee revealed bilateral knee osteoarthritis with severe joint space narrowing at the medial compartments, left worse than right.

In a March 4, 2019 medical report, Dr. Stowell diagnosed bilateral knee osteoarthritis. In a note of even date, Dr. Stowell provided work restrictions.

A March 8, 2019 MRI scan of the left knee demonstrated a complete anterior cruciate ligament (ACL) tear with a partial medial collateral ligament (MCL) tear, a large tear of the posterior horn of the medial meniscus with a displaced meniscal fragment, osteoarthritis and chondromalacia of the knee joint, and small effusion with a large Baker's cyst.

In a March 18, 2019 medical report, Dr. Stowell diagnosed bilateral knee osteoarthritis and left knee MCL, ACL, and meniscal tears.

In a March 19, 2019 attending physician's report (Form CA-20), Dr. Stowell diagnosed bilateral knee osteoarthritis, noting that appellant had a history of bilateral knee pain, meniscus tears, and osteoarthritis. He checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by an employment activity.

In an April 2, 2019 letter, Dr. Stowell opined that due to the extent of physical activity of walking at work, appellant's preexisting bilateral knee osteoarthritis "would have been exacerbated."

An April 9, 2019 computerized tomography (CT) scan of the left lower extremity demonstrated degenerative changes of the left hip, knee, and ankle. A CT scan of the right lower extremity of even date revealed degenerative changes of the right hip and knee with small right knee joint effusion and mild subcutaneous edema of the right calf.

In an April 11, 2019 letter, Dr. Stowell diagnosed bilateral knee pain and osteoarthritis, as well as right knee medial meniscus tear. He again opined that due to the extent of physical activity of walking at work, appellant's preexisting bilateral knee osteoarthritis "would have been exacerbated."

In a May 9, 2019 medical report, Dr. Eric H. Linford, a Board-certified orthopedic surgeon, noted that appellant presented for evaluation of her bilateral knee and advised that she was referred to him by Dr. Stowell. Appellant reported to him that she experienced persistent pain in her knees that was worse with walking. Dr. Linford indicated that appellant underwent bilateral arthroscopic knee surgery on that day. He conducted a physical examination and diagnosed bilateral arthritis, chronic ACL tear on the left with patella and medial compartment chondromalacia, as well as chondromalacia on the right knee with intact ligaments. Dr. Linford opined that appellant's job "could have worsened her arthritis."

By decision dated May 22, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On July 26, 2019 appellant requested reconsideration and submitted additional evidence.

In a July 11, 2019 narrative report, Dr. Linford noted that he began treating appellant since May 2019 for bilateral knee osteoarthritis. He indicated that appellant initially sustained nonwork-related meniscus tearing of her left knee approximately 10 years ago and had an extensive treatment history in both knees, including several knee arthroscopies. Dr. Linford also noted that the x-ray reports demonstrated bilateral knee arthritis and her MRI scans showed clear cartilage loss and degeneration. He related that appellant provided him with her job description and noted that appellant's duties included prolonged standing, extensive walking on hard, concrete surfaces and uneven terrain while carrying a mailbag weighing up to 35 pounds, bending, twisting, lifting, and stooping. Appellant also reported that she pivoted on her feet several hundred times daily and regularly climbed stairs.

Dr. Linford explained that appellant's repetitive nature of her job "certainly could progress any sort of pathology within the knees, including degenerative meniscal tears and/or cartilage defects." He opined, within reasonable medical certainty, that appellant's "work requirements have accelerated her knee osteoarthritis and the subsequent pain and disability." Dr. Linford also opined that appellant's work duties "would have ... permanently aggravated" the diagnosed condition of osteoarthritis with repetitive motion, as well as with loading and twisting movements throughout the workday. He explained that appellant's progress was much quicker than any normal aging process. Dr. Linford concluded that appellant's bilateral knee osteoarthritis was "certainly directly related to her job duties" and "would be worsened and progressed with excessive walking, twisting, and carrying heavy loads and prolonged standing during the day."

By decision dated July 31, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim.

On May 19, 2020 appellant, through her representative, again requested reconsideration and submitted additional evidence.

In a September 13, 2019 statement, appellant again explained her work duties and asserted that her work duties required her to walk substantially more than the average American, approximately 32,500 miles over 20 years, resulting in her diagnosed conditions.

In a May 18, 2020 narrative report, Dr. Linford again noted that he began treating appellant in May 2019 for bilateral knee osteoarthritis. He provided a history of appellant's injury and treatments. Dr. Linford additionally noted that appellant provided him with her September 13, 2019 statement, which detailed the nature of her work duties, which again included prolonged standing, extensive walking on hard, concrete surfaces and uneven terrain while carrying a mail bag weighing up to 35 pounds, bending, twisting, lifting, and stooping. He explained that the repetitive nature of appellant's job "would progress any sort of pathology within the knees, including degenerative meniscal tears and/or cartilage defects." Dr. Linford again opined that appellant's work duties would have permanently aggravated the diagnosed condition of osteoarthritis and that her progress was much quicker than any normal aging process. He concluded that appellant's bilateral knee osteoarthritis was "certainly directly related to her job duties" and "would be worsened and progressed with excessive walking, twisting, and carrying heavy loads and prolonged standing during the day."

OWCP also received a copy of appellant's letter carrier position description.

By decision dated May 28, 2020, OWCP again denied appellant's request for reconsideration of the merits of her 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.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

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

³ *Id.* at § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. 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.

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 pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, nor has she advanced a relevant legal argument not previously considered by OWCP. In her September 13, 2019 statement, appellant asserted that her work duties required a lot of walking, resulting in her diagnosed conditions. These assertions do not show a legal error by OWCP or constitute a new and relevant legal argument.⁸ These assertions are simply a reassertion of the facts which OWCP considered in weighing the evidence presented in the case and finding that appellant had not met her burden of proof. 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.⁹ Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁰

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. The underlying issue in the case is whether appellant has provided sufficient medical evidence to establish that her diagnosed bilateral knee conditions were causally related to the accepted factors of her federal employment. This is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ Appellant submitted a May 18, 2020 narrative report of Dr. Linford, who opined that appellant's repetitive nature of her job "would progress" any sort of pathology within the knees. While this evidence is new, it is substantially similar to Dr. Linford's July 11, 2019 narrative report, which opined that appellant's repetitive nature of her job "certainly could progress" any sort of pathology within the knees. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.¹² Appellant also submitted her position

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

⁷ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁸ *See. Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

⁹ *R.R.*, Docket No. 20-0378 (issued March 9, 2021); *G.D.*, Docket No. 18-1665 (issued March 12, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

¹⁰ *See A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹¹ *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

¹² *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

description as a letter carrier in support of her request for reconsideration. This evidence, however, is irrelevant as it does not address the underlying issue of causal relationship. The Board has held that the submission of evidence that does not address the underlying issue involved does not constitute a basis for reopening a case.¹³ As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹⁴

The Board, accordingly, finds that appellant did not meet 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.¹⁵

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 May 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ *E.J.*, Docket No. 20-0841 (issued February 12, 2021); *T.T.*, Docket No. 19-1624 (issued October 28, 2020).

¹⁴ *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁵ *See J.B.*, Docket No. 20-0145 (issued September 8, 2020).