

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

_____)
J.A., Appellant)

and)

U.S. POSTAL SERVICE, RIDGEWOOD POST)
OFFICE, Ridgewood, NY, Employer)
_____)

Docket No. 21-0291
Issued: October 13, 2022

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 23, 2020 appellant, through counsel, filed a timely appeal from an October 28, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (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 an 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 The Board notes that counsel did not appeal OWCP's July 21, 2020 merit decision. Therefore, that decision is not presently before the Board. *See* 20 C.F.R. § 501.3.

³ 5 U.S.C. § 8101 *et seq.*

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 August 22, 2019 appellant, then a 44-year-old letter carrier/truck driver, filed a traumatic injury claim (Form CA-1) alleging that on August 21, 2019 he sustained abrasions on his hands, wrist, and right cheek, a muscle strain of the upper chest, and left knee swelling when he fell down stairs after delivering a package while in the performance of duty. He stopped work on August 21, 2019. On October 1, 2019 OWCP accepted the claim for a left knee contusion.

In an October 8, 2019 attending physician's report (Form CA-20), Dr. Goodman noted continued clicking with flexion and extension of the left knee with no effusion. He found appellant totally disabled from work.

In reports dated November 13, 2019, Dr. Goodman noted full range of motion of the left knee with no instability or effusion. He diagnosed osteoarthritis of the left knee causally related to the August 21, 2019 left knee contusion. Dr. Goodman found appellant disabled from work. He recommended physical therapy and a knee brace.

On November 22, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 6 through November 22, 2019.

In a December 3, 2019 development letter, OWCP informed appellant of the deficiencies of his claim for compensation. It advised him of the type of medical evidence required and afforded him 30 days to submit the requested evidence.

On December 16, 2019 appellant filed a Form CA-7 for disability from work during the period November 23 through December 8, 2019.

By decision dated January 2, 2020, OWCP denied appellant's claims for wage-loss compensation for disability from work commencing October 6, 2019.

On January 15, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. He submitted November 19, 2019 physical therapy notes.

During the hearing held on April 15, 2020 appellant testified that he had been totally disabled from work since the August 21, 2019 injury due to left knee symptoms.

Following the hearing, appellant submitted a May 27, 2020 report by Dr. Yehuda Kleinman, a Board-certified orthopedic surgeon. Dr. Kleinman noted a history of injury and treatment. On examination of the left knee, he noted tenderness over the patellofemoral joint, a positive patellar grind test, no swelling or effusion, and full flexion and extension. Dr. Kleinman opined that the accepted employment injury resulted in symptomatic chondromalacia of the patella and a medial meniscal tear.

By decision dated July 21, 2020, OWCP's hearing representative affirmed the January 2, 2020 decision, finding that the medical evidence of record did not contain sufficient medical rationale to establish a causal relationship between the accepted employment injury and the claimed period of disability.

On August 17, 2020 appellant, through counsel, requested reconsideration. In support thereof, he provided a copy of Dr. Kleinman's May 27, 2020 report previously of record.

By decision dated October 28, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA⁴ does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has impose certain limitations in exercising its authority.⁶ 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.⁷ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or 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.⁸ When a timely request 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 review on the merits.⁹

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 request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously

⁴ 5 U.S.C. § 8128(a). Under section 8128 of FECA, the Secretary of Labor may review an award for or a gainst payment of compensation at any time on his own motion or on application.

⁵ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or a gainst payment of compensation at any time on [appellant's] own motion or on application." 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.607.

⁷ *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 its decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2020). 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.

⁸ *Id.* at § 10.606(b)(3).

⁹ *Id.* at § 10.608(b).

considered by OWCP. Consequently, was he is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With his request for reconsideration, appellant resubmitted Dr. Kleinman's May 27, 2020 report, which was previously of record and considered by OWCP. The Board has held that providing evidence that either repeats or duplicates information already of record does not constitute a basis for reopening a claim.¹⁰ Therefore, it is insufficient to require OWCP to reopen the clam for consideration of the merits. As appellant did not submit any relevant and pertinent new evidence with his August 17, 2020 request for reconsideration, he is not entitled to a review of the merits based on the third above-noted requirement under section 10.606(b)(3).¹¹

The Board, therefore, 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).

¹⁰ *K.M.*, Docket No. 19-1784 (issued April 20, 2021); *P.W.*, Docket No. 20-0380 (issued November 23, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹¹ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board