

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

R.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer

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**Docket No. 21-0791
Issued: March 14, 2023**

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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 12, 2021 appellant filed a timely appeal from an October 26, 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 June 24, 2019, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 26, 2020 decision, OWCP received additional evidence on appeal. 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 April 11, 2017 appellant, then a 69-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2017 he injured his left knee while in the performance of duty. He explained that, as he was exiting his vehicle to the left, he stood up, heard a pop, and experienced pain in his left knee. Appellant stopped work on April 11, 2017.

In an April 12, 2017 medical report, Christopher Kern, a physician assistant, diagnosed left knee effusion and a sprain of the lateral collateral ligament (LCL) of the left knee. He recommended that appellant rest his knee and follow up with an orthopedist the following day. In a duty status report (Form CA-17) of even date Mr. Kern diagnosed a LCL strain and opined that appellant was unable to resume work.

In a development letter dated April 28, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

In a May 2, 2017 report, Dr. Samuel Brown, Board-certified in sports medicine, noted that appellant experienced pain in his left knee after his knee moved in a twisting motion at work. On evaluation and review of an x-ray scan of appellant's left knee, he diagnosed left knee pain, degenerative joint disease, and unilateral primary osteoarthritis. Dr. Brown recommended that appellant undergo a magnetic resonance imaging (MRI) scan of his left knee for further evaluation. In a Form CA-17 of even date he diagnosed left knee pain³ and advised that appellant return to work with restrictions on May 8, 2017.

In response to OWCP's development questionnaire, appellant submitted a May 3, 2017 statement explaining that he was on the job delivering mail when his injury occurred on April 11, 2017. Following his injury, he returned to workstation and immediately informed his supervisor. Appellant described his injury as very sharp knee pain with popping and swelling.

In a May 10, 2017 diagnostic report, Dr. Hiten Patel, a Board-certified radiologist, performed an MRI scan of appellant's left knee and observed a complex tear/maceration of the posterior horn of the medial meniscus with peripheral meniscal displacement, a horizontal tear of the posterior horn of the lateral meniscus, and medial compartment predominant degenerative changes with large area full-thickness cartilage loss.

³ Dr. Brown's Form CA-17 diagnosed right knee pain, however, this appears to be a typographical error.

In a May 16, 2017 medical report, Dr. Brown reviewed the history of appellant's April 11, 2017 employment injury and the MRI scan of his left knee. He reiterated his diagnoses of left knee pain, degenerative joint disease, and medial meniscal tear.

By decision dated May 31, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between his left knee conditions and the accepted April 11, 2017 employment incident.

OWCP continued to receive evidence. In a May 16, 2017 Form CA-17, Dr. Brown diagnosed a left knee medial meniscus tear due to the April 11, 2017 employment incident. He advised that appellant could return to work with restrictions.

On June 23, 2017 appellant requested reconsideration of OWCP's May 31, 2017 decision. He attached a June 15, 2017 amended copy of Dr. Brown's May 16, 2017 Form CA-17, in which Dr. Brown clarified that appellant sustained a left knee meniscal tear, not a right knee meniscal tear.

By decision dated July 26, 2017, OWCP denied modification of its May 31, 2017 decision.

On August 14, 2017 appellant requested reconsideration of OWCP's July 26, 2017 decision.

In an August 2, 2017 report, Dr. Brown explained that appellant sustained a twisting injury at work on April 11, 2017. He observed that appellant had experienced catching, locking, and popping in his left knee since that time and that these symptoms did not exist prior to appellant's left knee injury, though he did have arthritis. Dr. Brown indicated that a May 10, 2017 MRI scan of appellant's left knee revealed a complex tear/maceration of the posterior horn of the medial meniscus with peripheral meniscal displacement, a horizontal tear of the posterior horn of the lateral meniscus, and medial compartment predominant degenerative changes with large area full-thickness cartilage loss.

By decision dated November 8, 2017, OWCP denied modification of its July 26, 2017 decision.

In a January 10, 2018 report, Dr. Brown again recounted that appellant injured his left knee on April 11, 2017 while exiting his vehicle at work. He noted that an MRI scan of appellant's left knee revealed preexisting degenerative arthritis and an acute bucket handle meniscus tear in his left knee that would require surgical treatment. Dr. Brown opined that a delay in appellant's medical treatment would lead to a worsening of his condition.

On February 27, 2018 appellant requested reconsideration of OWCP's November 8, 2017 decision. He resubmitted copies of Dr. Brown's reports that were previously of record.

By decision dated May 23, 2018, OWCP denied modification of its November 8, 2017 decision.

On April 8, 2019 appellant requested reconsideration of OWCP's May 23, 2018 decision.

Appellant submitted the first page of an occupational disease claim (Form CA-2) dated July 18, 1989 where he indicated that, to the best of his recollection, that he had an injury to his left knee as early as July 3, 1989.

Appellant submitted a March 16, 2019 report, which indicated that Dr. Brown performed a left knee arthroscopy on March 1, 2019 to treat appellant's left knee. In a form report of even date, Dr. Brown indicated that he held appellant off work from March 1 to April 16, 2019 due to his left knee arthroscopy. The form diagnosed left knee osteoarthritis and a medial meniscus tear.

By decision dated June 24, 2019, OWCP denied modification of its May 23, 2018 decision.

On May 13, 2020 appellant requested reconsideration of OWCP's June 24, 2019 decision and resubmitted medical evidence previously of record.

By decision dated October 26, 2020, OWCP denied appellant's request for reconsideration of the merits of his 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 or her own motion or on application.⁴

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.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the

⁴ 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).

⁵ 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).

⁶ *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 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.

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

requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

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).

In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and did not advance a new and relevant legal argument not previously considered. Thus, 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).⁹

With his request for reconsideration, appellant resubmitted medical evidence from Dr. Brown regarding his medical treatment for his left knee condition. The Board has held that providing additional evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹⁰ Because appellant has not provided relevant and pertinent new evidence, he was not entitled to a review of the merits based on the third 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).

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

⁹ *Id.* at § 10.606(b)(3); *see K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.D.*, *supra* note 4; *see also L.G.*, *supra* note 5; *C.N.*, *supra* note 5.

¹⁰ *S.F.*, Docket No. 18-0516 (issued February 21, 2020); *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹¹ *See* 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board