



## **FACTUAL HISTORY**

On January 23, 2006 appellant filed a traumatic injury claim (Form CA-1) for severe knee pain that she alleges arose from an October 3, 2005 incident when she fell off a curb. The employing establishment controverted appellant's claim.

By decision dated August 3, 2006, the Office denied appellant's claim because the evidence of record was insufficient to establish that appellant sustained an injury as defined by the Federal Employees' Compensation Act.

On April 2, 2007 appellant requested reconsideration.

Appellant submitted a May 17, 2007 note in which Dr. Daryn N. McClure, Board-certified in family medicine, reported that "it is highly likely that the lateral meniscal tear of [appellant's] knee occurred when she stepped [off] the curb" and that the subsequent damage to her knee was caused by delayed care due to the threat made by her supervisor.

Appellant submitted additional evidence and by decision dated July 6, 2007 the Office modified its August 2006 decision. The Office accepted that the incident occurred as alleged but denied appellant's claim because the evidence of record was insufficient to establish that her condition was causally related to the accepted employment incident.

Appellant disagreed and on May 9, 2008, through her representative, requested reconsideration.

Appellant submitted a November 30, 2007 note signed by Dr. McClure who reviewed appellant's history of injury and opined that appellant's knee injury and subsequent surgeries were "the direct result of the fall while delivering the mail." He also opined that "continuing to work after the injury caused additional damage to her left knee."

By decision dated June 27, 2008, the Office denied appellant's reconsideration request.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>2</sup> the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.607(a).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### **ANALYSIS**

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law. Her reconsideration request did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant was not entitled to reconsideration under the first two enumerated statutory grounds.

Concerning the third enumerated ground, appellant has not submitted relevant and pertinent new evidence not previously considered by the Office. The relevant issue is whether the identified employment incident caused her knee condition. While Dr. McClure opined that appellant's knee condition was "the direct result of the fall while delivering the mail," his opinion merely duplicates that expressed in his prior notes and provides no new relevant and pertinent evidence. Therefore, Dr. McClure's opinion is repetitive and provides no basis for reopening appellant's claim for further review on the merits.

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly refused to reopen her case for further review of the merits of her claim.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

---

<sup>5</sup> *Id.* at § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board