

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

E.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 10-1488
Issued: March 7, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2010 appellant filed an appeal from a January 29, 2010 decision of the Office of Workers' Compensation Programs denying his request for reconsideration. As the most recent merit decision is dated May 12, 2009, more than 180 days prior to the filing of this appeal, the Board does not have jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.¹

ISSUE

The issue is whether the Office properly denied appellant's request for merit review of his claim under 5 U.S.C. § 8128.

¹ For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On April 29, 2006 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging torn cartilage in both knees due to factors of his federal employment. He first became aware of his condition and its relation to his federal employment on April 27, 2006.

Appellant submitted an April 19, 2006 magnetic resonance imaging (MRI) scan of his right knee. In a July 7, 2006 report, Dr. Samir N. Azer, a Board-certified orthopedic surgeon, provided an impression of degenerative meniscal tears of the right and left knees.

By decision dated July 17, 2006, the Office denied appellant's claim finding that fact of injury was not established.

On July 24, 2006 appellant requested a review of the written record. Additional factual and medical evidence were submitted.

By decision dated October 23, 2006, an Office hearing representative affirmed the July 17, 2006 decision. He found that the medical evidence of record did not relate the accepted employment activities to the diagnosed knee conditions.

On January 8, 2007 appellant requested reconsideration. He submitted statements dated January 8 and June 25, 2007; a June 29, 2006 report from Dr. Frank M. Ryan, a Board-certified internist; and additional reports from Dr. Azer dated June 26, 2006 to January 4, 2007.

By decision dated May 12, 2009, the Office affirmed the July 17, 2006 denial of appellant's claim. It found that the medical evidence did not establish a causal relationship between his knee conditions and employment factors.

On July 20, 2009 appellant requested reconsideration. He asserted that his claim was compensable and reiterated the factual and medical circumstances surrounding his knee conditions. Appellant also provided a description of his job duties. He submitted duplicative copies of evidence previously of record. New medical and factual evidence submitted concerned numerous other medical conditions, previous surgeries, a previous back and knee condition, reports from Dr. Azer regarding treatment and an October 17, 2006 surgical report concerning appellant's right knee.

By decision dated January 29, 2010, the Office denied appellant's request for reconsideration without a merit review finding that he did not raise any substantive legal questions or include new and relevant evidence.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show

² 5 U.S.C §§ 8101-8193. Under section 8128 of the Act, the 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).

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.³ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.⁴

ANALYSIS

Appellant's July 10, 2009 request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. To the extent appellant argued that the medical record established causation, the Board notes that causal relationship is a medical issue and must be supported by medical evidence.⁵ His contentions on reconsideration do not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim under the first two requirements under section 10.606(b)(2).

Appellant submitted new evidence with his request for reconsideration. The underlying decision denied his claim for occupational disease to both knees. The evidence concerning appellant's other medical conditions and previous claims are not relevant to the present claim. The evidence from Dr. Azer which was not previously of record, while new, contains no additional opinion on the cause of appellant's claimed knee conditions. The evidence from Dr. Azer is not relevant as it fails to address the underlying issue of whether appellant's claimed knee conditions are causally related to factors of his employment.

Appellant also resubmitted copies of medical reports and factual evidence. The submission of evidence which repeats or duplicates that already of record does not constitute a basis for reopening a case for merit review.⁶

Consequently, the evidence and argument submitted by appellant on reconsideration do not establish a basis for reopening the claim for a merit review under the Office's regulatory criteria. It properly denied his July 20, 2009 request for reconsideration.

On appeal, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal.⁷ He also repeated his contention that the

³ 20 C.F.R. § 10.606(b)(1)-(2). See *Susan A. Filkins*, 57 ECAB 630 (2006).

⁴ 20 C.F.R. § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

⁵ See *Y.J.*, 60 ECAB ____ (Docket No. 08-1167, issued October 7, 2008). See also *Gloria J. McPherson*, 51 ECAB 441 (2000) (lay individuals are not competent to render a medical opinion).

⁶ *David J. McDonald*, 50 ECAB 185 (1998); *John Polito*, 50 ECAB 347 (1999); *Khambandith Vorapanya*, 50 ECAB 490 (1999).

⁷ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

evidence of record supported his claim. As noted, the Board finds that the evidence submitted with his reconsideration request does not warrant further merit review.

CONCLUSION

The Board finds the Office properly denied appellant's request for further review of the merits of his claim under section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2010 is affirmed.

Issued: March 7, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board