United States Department of Labor
Employees' Compensation Appeals Board

N.L., Appellant	)	
and	)	**Docket No. 10-1552**
	)	**Issued: March 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 20, 2010 appellant filed a timely appeal from a November 23, 2009 decision of the Office of Workers' Compensation Programs which denied his request for reconsideration. Because more than one year elapsed between the October 1, 2008 merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 20, 2006 appellant, then a 47-year-old postal inspector, filed a traumatic injury claim alleging that on September 8, 2005 he sprained his right ankle and tore his left knee medial

meniscus in the performance of duty. The Office accepted his claim for tear of the medial meniscus of the left knee.[1] Appellant received appropriate compensation and benefits.

On March 13, 2007 appellant filed a claim for a schedule award. In a May 28, 2007 report, Dr. Daniel Gallagher, a Board-certified orthopedic surgeon, reviewed appellant's history and the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 166 (5th ed. 2001) (hereinafter A.M.A., *Guides*). He determined that appellant had post-traumatic arthritis in the left knee due to a previous medial meniscectomy and had reached maximum medical improvement on October 31, 2006. Appellant continued to have left knee pain with prolonged standing and walking and activity. On examination, there was no effusion, the knee was stable and had full range of motion. Dr. Gallagher opined that appellant had a four percent whole body impairment rating or 10 percent left leg impairment due to the pain and discomfort and limited ability to perform strenuous work activities.

The Office referred appellant for a second opinion examination to Dr. Raymond E. Fletcher, a Board-certified orthopedic surgeon. In a report dated December 18, 2007, Dr. Fletcher utilized the A.M.A., *Guides* to determine that appellant had seven percent impairment to the left leg. In reports dated February 13 and April 9, 2008, the Office medical adviser referred to Table 17-31 and Table 17-33 of the A.M.A., *Guides* and concurred with Dr. Fletcher that appellant had seven percent impairment of the left leg.[2]

In a May 2, 2008 decision, the Office granted appellant a schedule award for seven percent permanent impairment of the left lower extremity. The award covered a period of 20.16 weeks from December 18, 2007 to May 7, 2008.

On June 19, 2008 appellant requested reconsideration and submitted additional medical evidence. In a report dated June 16, 2008, Dr. Gallagher repeated the findings in his May 28, 2007 report. He referred to Table 17-31 and Table 17-33 and found that appellant had 10 percent impairment of the left leg.

By decision dated October 1, 2008, the Office denied modification of its May 2, 2008 decision.

In an August 17, 2009 report, Dr. Gallagher repeated the findings contained in his June 16, 2008 report and opined that appellant sustained an impairment of 10 percent to the left lower extremity.

On October 1, 2009 appellant requested reconsideration.

By decision dated November 23, 2009, the Office denied appellant's request for reconsideration finding that the evidence submitted in support of the request was insufficient to warrant further merit review.

---

[1] Appellant underwent surgery on February 22, 2006, which revealed a meniscus tear. He later had a debridement of the tear.

[2] A.M.A, *Guides* 544, 546.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,[3] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the Office; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[4]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[5]

ANALYSIS

Appellant disagreed with the denial of his claim for a schedule award and requested reconsideration on October 1, 2009.

Appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by the Office. He submitted a new medical report, dated August 17, 2009, in which Dr. Gallagher provided findings, utilized the A.M.A., *Guides* and opined that appellant had 10 percent impairment of the left leg. The Board notes that the rating by Dr. Gallagher duplicates that made in his June 16, 2008 report. Dr. Gallagher did not offer any new opinion regarding appellant's permanent impairment. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[6] Therefore, the Office properly determined that this evidence, while new, was not relevant because it is repetitive of evidence previously of record. This report did not constitute a basis for reopening the case for a merit review.

---

[3] 5 U.S.C. § 8128(a).

[4] 20 C.F.R. § 10.606(b).

[5] *Id.* at § 10.608(b).

[6] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

The Board finds that the Office properly denied appellant's October 1, 2009 request for reconsideration.[7]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 23, 2009 is affirmed.

Issued: March 10, 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

[7] The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *See Linda T. Brown,* 51 ECAB 115 (1999). *See also A.A.*, 59 ECAB 726 (2008).