

180 days elapsed between the last merit decision to the filing of this appeal, the Board lacks jurisdiction to review the merits of this case.³

ISSUE

The issue is whether OWCP properly denied appellant's request for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 15, 2011 appellant, then a 47-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that he developed patella femoral syndrome as a result of stepping into his long life vehicle (LLV) which caused his right knee to give out and hurt his lower back. He first became aware of his condition on April 30, 2003 and of its relationship to his employment on August 3, 2009. Appellant notified his supervisor on November 13, 2011.

In support of his claim, appellant submitted two physician's assistant progress notes.

By letter dated December 6, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. No other evidence was received by OWCP.

By decision dated February 16, 2012, OWCP denied appellant's claim finding that he did not establish fact of injury.

On May 9, 2012 appellant requested reconsideration of OWCP's decision. He stated that he submitted additional information on December 28, 2011 and had also enclosed copies of the additional information with his reconsideration request. The only documents accompanying appellant's reconsideration request was a copy of OWCP's December 6, 2011 development letter and a letter dated December 15, 2011 from human resources requesting documentation from appellant for this claim.

By decision dated July 20, 2012, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), its regulations provide that the evidence or argument submitted by a claimant must: (1) show that the OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new

³ For decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. An appeal of OWCP decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

evidence not previously considered by OWCP.⁴ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), it will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

The Board finds that OWCP properly denied appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On appeal appellant argues that he incorrectly noted the date of injury as April 30, 2003 on his Form CA-2 and was actually injured on August 3, 2009. He further stated that he had a back injury which was approved in claim No. xxxxxx819, and that his knee injury was not approved which occurred from the same incident.⁶ The Board notes, however, that claim No. xxxxxx819 is not before the Board and the Board does not have access to the documents in that claim. In this instance, appellant has filed an occupational disease claim and has not alleged a traumatic injury claim or recurrence of a prior injury.⁷ It is appellant's burden to specify the nature of his claim. Thus, he must submit relevant evidence which establishes the employment activities in which he was engaged that caused his occupational exposure.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his May 9, 2012 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant stated that he submitted additional information on December 28, 2011 and also enclosed copies of this additional information with his reconsideration request. As his reconsideration request was received, the issue is not whether his reconsideration request was delivered, but rather whether the request was accompanied by additional evidence. Appellant has not otherwise provided argument or evidence of sufficient probative value to show that he submitted additional medical evidence which was ever received by OWCP. The record before the Board contains no additional medical evidence. The record also fails to show that appellant submitted documents on December 28, 2011. As previously noted, claim No. xxxxxx819 is not before the Board and any documents from that claim must be submitted under this claim, No. xxxxxx041.

Appellant failed to submit any evidence factually establishing his claimed occupational exposure to a condition which caused him medical injury or disease. To require OWCP to reopen a case for reconsideration, appellant must submit relevant evidence not previously of

⁴ *D.K.*, 59 ECAB 141 (2007).

⁵ *K.H.*, 59 ECAB 495 (2008).

⁶ Appellant's prior claim No. xxxxxx819 is not explained or developed in the record before the Board in this appeal.

⁷ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(x).

record or advance legal contentions not previously considered.⁸ In this case, appellant failed to submit any new and relevant evidence addressing fact of injury.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by it, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ *E.g., Eladio Joel Abrera*, 28 ECAB 401 (1977); *Edward Matthew Diekemper*, 31 ECAB 224 (1979); *Ethel D. Curry*, 35 ECAB 737 (1984); *Helen E. Tschantz*, 39 ECAB 1382 (1988).