

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 9, 2017 appellant, then a 74-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2017 he injured his left knee while in the performance of duty. He explained that he was stepping down from the spoiler and when his foot hit the ground, he felt his left knee "pop" and he "felt a lot of pain." Appellant stopped work on December 8, 2017. The employing establishment controverted the claim and indicated that the incident was not investigated by the supervisor at the location.

A December 9, 2017 x-ray of the left knee read by Dr. Francisco Menendez, a Board-certified diagnostic radiologist, revealed minimal degenerative changes.

In a development letter dated December 15, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary and provided a factual questionnaire for his completion. Appellant was afforded 30 days to submit the necessary evidence.

OWCP subsequently received reports dated December 11 and 21, 2017, and January 9, 2018 from Jerry Rhode, a nurse practitioner. The December 11, 2017 notes indicated that appellant was "stepping down from cab and unclear of exactly what happened, but felt sudden sharp, stabbing pain to his left knee." In these reports, Mr. Rhode listed appellant's diagnosis as left knee sprain.

A January 4, 2018 magnetic resonance imaging (MRI) scan of the left knee, interpreted by Dr. Ronald Cooper, a diagnostic radiologist, demonstrated a root tear of the posterior horn of the medial meniscus, extending to the posterior horn, a grade 2 chondromalacia of the medial compartment, and a mild medial collateral ligament sprain with acute findings.

By decision dated January 22, 2018, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish that the employment event occurred as described. It explained that it had not received a response from appellant regarding the information requested in the December 15, 2017 development letter.

On February 23, 2018 appellant requested reconsideration and submitted additional evidence.

OWCP received a December 8, 2017 emergency room report from Dr. Jeremy Kirtz, Board-certified in emergency medicine, relating that appellant was stepping out of his postal carrier with his leg straight when he experienced a sudden onset of extreme pain in the left knee. Dr. Kirtz diagnosed acute internal derangement of the left knee.

² Docket No. 18-1357 (issued March 26, 2019).

In a December 28, 2017 report, Dr. Gregory Schwaid, Board-certified in general preventive medicine, noted the onset two weeks prior of symptoms at the left knee, medial and lateral. He diagnosed a strain of the left knee, initial encounter.

In a January 30, 2018 statement, appellant explained that on December 8, 2017 he was at work when he stepped down from his truck and when his left foot hit the ground, it “felt as if my left knee exploded.” He also noted that it was “not a sharp pain, but my whole knee hurt” and that he called his boss, told him what happened, and that he would try to finish his shift. Appellant related that he could walk straight, but could not twist his knee, that it seemed to be better after lunch, but when he went back to his truck and tried to get out, it happened again. He explained that he called his supervisor and informed him that he could not continue with his work duties and sought medical treatment.

In a February 2, 2018 report, Dr. Grant Garlick, a Board-certified orthopedic surgeon, noted that appellant presented with a chief complaint of left knee pain and swelling. He diagnosed left knee osteoarthritis with a “most likely” degenerative meniscus tear.

By decision dated June 20, 2018, OWCP affirmed the January 22, 2018 decision, as modified. It found that the factual evidence of record was sufficient to establish that the claimed work incident occurred as alleged. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted employment incident.

On July 2, 2018 appellant filed a timely appeal to the Board from the June 20, 2018 merit decision.

By decision dated March 26, 2019, the Board found that appellant had not met his burden of proof to establish that his left knee condition was causally related to the accepted December 8, 2017 employment incident. The Board explained that the medical evidence of record did not establish how the December 8, 2017 employment incident caused or aggravated a left knee condition.

On May 30, 2019 appellant requested reconsideration and submitted additional evidence.

In an April 30, 2019 attending physician’s report (Form CA-20), Dr. Kirtz noted that appellant had sudden onset of left knee pain when stepping out of his postal carrier vehicle. He diagnosed internal derangement of the left knee and checked a box marked “Yes” in response to whether he believed the condition was caused or aggravated by an employment activity.

By decision dated August 16, 2019, OWCP denied modification of the March 26, 2019 decision. It explained that a physician checking a box on the form did not establish that the medical condition was caused or aggravated by an employment injury. OWCP further explained that where a preexisting condition was involved with the same part of the body, the issue of causal relationship involved aggravation, and the physician must provide a rationalized medical opinion that differentiated between the effects of the work-related injury or disease and the preexisting condition.

On December 20, 2019 appellant requested reconsideration. He denied providing two different versions of the employment incident and indicated that the employing establishment changed his statement from “spotter” to “spoiler.” Appellant explained that a “spotter” was a truck

used to move trailers in the yard and that it had a step of about seven to eight inches high. He explained that, when he stepped down, the meniscus in his left knee was torn, and that the January 4, 2018 MRI scan showed a torn meniscus. Appellant argued that, despite there being a torn meniscus, OWCP wanted an opinion on “causal relationship” and that the reason for denial of his claim was a “preexisting condition and rational medical certainty.” He questioned “[w]hat preexisting condition” and related that his knee was fine when he began work, he worked for four hours, and left work with a brace on his knee and crutches. Appellant argued that his physicians indicated that there was an injury, it was work related, and he was entitled to compensation for time lost as a result of the work injury.

By decision dated August 4, 2020, OWCP denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

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).

On December 20, 2019 appellant requested reconsideration. He contended that he did not provide two different versions of the employment incident and that the employing establishment changed his statement from “spotter” to “spoiler.” Appellant noted that his MRI scan showed a torn meniscus and that his knee was fine before the work incident, and argued that OWCP

³ This section provides in pertinent part: “The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

⁴ *Id.*

⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP’s decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). 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.

⁶ *Id.* at § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

improperly found that he had a preexisting condition. He further argued that his physicians indicated that there was an injury, it was work related, and he was entitled to compensation for time lost as a result of the work injury. The Board finds that these arguments do not show that OWCP erroneously applied or interpreted a specific point of law, nor do they advance a relevant legal argument not previously considered by OWCP. The Board notes that OWCP had already considered the factual and medical evidence of record when it previously denied appellant's claim. OWCP had previously reviewed the evidence cited by appellant and found that it was not of sufficient probative value to require either acceptance or further development of appellant's claim. The Board has held that the submission of evidence/argument, which repeats or duplicates evidence or argument already in the case record, does not constitute a basis for reopening a case.⁸ Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁹

On reconsideration appellant did not submit any new medical evidence. The underlying issue of the present case is medical in nature and appellant has not submitted pertinent new and relevant evidence in connection with his reconsideration request.¹⁰ Therefore, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3), *i.e.*, the submission of relevant and pertinent new evidence not previously considered by OWCP.

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3).¹¹ Pursuant to 20 C.F.R. § 10.608, OWCP properly denied the request for reconsideration without reopening the case for review on the merits.¹²

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 *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ 20 C.F.R. § 10.606(b)(3); *see T.B.*, Docket No. 21-0045 (issued June 2, 2021); *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁰ *See R.M.*, Docket No. 21-0265 (issued June 23, 2021).

¹¹ *Supra* note 9.

¹² *See G.M.*, Docket No. 20-1485 (issued March 22, 2021); *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board