

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On April 14, 2010 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim alleging that on that date she walked across grass and felt a pop in her left knee while performing her federal duties.

In an April 14, 2010 report, Dr. Frank L. Wilczynski, an osteopath, diagnosed a left knee strain. Appellant reported that her knee was injured that day when she was walking across grass and felt a pop in the side of the knee. She continued working but persistent pain prompted a medical consultation. Dr. Wilczynski's examination showed that appellant was in mild distress secondary to pain. Examination of the knee revealed swelling and mild warmth of the infra and suprapatellar area; an antalgic gait and she favored the left leg. Knee range of motion was decreased and palpitation revealed tenderness of the lateral knee area. Dr. Wilczynski noted that an x-ray showed moderate degenerative arthritis. He prescribed physical therapy, ice and ibuprofen. Dr. Wilczynski advised that appellant could return to work that day with restrictions of no prolonged standing and/or walking longer than 15 minutes at a time and no squatting and/or kneeling.

On April 19, 2010 Dr. Stuart J. Maslin, a Board-certified family practitioner, found that appellant could return to work with restrictions of no prolonged standing and/or walking longer than 20 minutes per hour. In an April 26, 2010 report, Dr. Wilczynski noted that she had a knee/leg sprain but could return to work with restrictions of no prolonged standing and/or walking longer than 30 minutes at a time and no squatting and/or kneeling. Appellant noted some improvement in her symptoms. Dr. Wilczynski noted that her pain in left knee was described as moderate, intermittent, aching and worse after activity.

In a May 11, 2010 report, Dr. Todd M. Lipschultz, a Board-certified orthopedic surgeon, diagnosed a knee/leg sprain and internal derangement of knee and that appellant could return to regular duty on May 11, 2010. Appellant returned to full duty on May 11, 2010. In a May 26, 2010 report, Dr. Lipschultz stated that she is now working full duty and is neurovascularly intact. He recommended follow up for three weeks but did indicate that appellant should remain in physical therapy. Appellant received physical therapy treatment for knee/leg sprain.

By letter dated May 26, 2010, OWCP requested that appellant submit further information within 30 days.

By decision dated June 28, 2010, OWCP denied appellant's claim finding that the medical evidence did not establish that her condition is related to the established work-related event. It mailed the decision to appellant's address of record.

On October 14, 2010 appellant requested review of the written record by an OWCP hearing representative. She alleged that she never received a copy of the June 28, 2010 decision.

By decision dated November 29, 2010, OWCP denied appellant's request for a review of the written record as it was not timely filed. It considered her request and in its discretion determined that the issue could equally well be addressed by requesting reconsideration from the district OWCP and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>2</sup> An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

### **ANALYSIS -- ISSUE 1**

Appellant alleged that, on April 14, 2010, she injured her left knee while walking across grass in the performance of her federal duties. There is no dispute with regard to the fact that this incident occurred. Appellant's claim was denied for failure to establish a causal relationship between this incident and a left knee condition.

Appellant submitted medical reports in support of her claim. She was initially seen by Dr. Wilczynski on the date of the incident. Dr. Wilczynski recounted appellant's history that she felt a pull in her left knee while walking across grass. He diagnosed a knee strain and treated her with physical therapy, ice, ibuprofen and work restrictions. However, Dr. Wilczynski did not provide a rationalized medical opinion addressing how the work incident caused or contributed to the left knee condition he treated. Appellant was subsequently treated by Drs. Maslin and

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<sup>2</sup> 20 C.F.R. § 10.5(ee).

<sup>3</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

Lipschultz. Each physician treated her for a left knee strain, but no physician provided a rationalized medical opinion relating a left knee injury to the work incident of April 14, 2010.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>4</sup> There is insufficient medical evidence to establish that she sustained an injury causally related to the accepted April 14, 2010 accepted incident. Accordingly, the Board finds that appellant failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.<sup>5</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that, before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>6</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>7</sup> OWCP's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>8</sup>

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA,<sup>9</sup> has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.<sup>10</sup> OWCP's procedures, which require OWCP to exercise its discretion to grant or deny a hearing or review of the written record when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.<sup>11</sup>

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<sup>4</sup> *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

<sup>5</sup> Appellant submitted evidence after OWCP issued its last merit decision on June 28, 2010. The Board's jurisdiction is limited to reviewing the evidence that before OWCP at the time of its decision. 20 C.F.R. § 10.501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995). As noted above, appellant may submit this new evidence to OWCP along with a request for reconsideration pursuant to 5 U.S.C. § 8182(a) and 20 C.F.R. §10.606(b)(2).

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> 20 C.F.R. § 10.615.

<sup>8</sup> *Id.* at § 10.616(a).

<sup>9</sup> 5 U.S.C. §§ 8101-8193.

<sup>10</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>11</sup> *Teresa M. Valle*, 57 ECAB 542 (2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

## **ANALYSIS -- ISSUE 2**

As previously discussed, OWCP denied appellant's claim by decision dated June 28, 2010. Appellant's request for review of the written record is dated October 14, 2010 which was more than 30 days after the issuance of the final decision. She contends that she did not receive this decision. However, the record reveals that on June 28, 2010 OWCP sent appellant a copy of the decision to her address of record. Under the mailbox rule it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>12</sup> Accordingly, the Board finds that OWCP properly found that appellant's request for a review of the written record was not timely under section 8213(b)(1) of FECA and that she was not entitled to such review as a matter of right.

OWCP then exercised its discretion and determined that the issue in the case could equally well be addressed in a request for reconsideration. As the only limitation on its authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.<sup>13</sup> The Board finds that there is no evidence of record that OWCP abused its discretion in denying appellant's request. The Board notes that her request could be addressed by requesting reconsideration from OWCP and submitting further evidence which establishes that she sustained an injury as alleged. Thus, the Board finds that OWCP's denial of appellant's request for review of the written record was proper under the law and the facts of this case.

## **CONCLUSION**

The Board finds that appellant has not established that she sustained an injury in the performance of duty on April 14, 2010, as alleged. The Board further finds that OWCP properly denied her request for review of the written record as untimely.

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<sup>12</sup> See *Joseph R. Giallanza*, 55 ECAB 186 (2003); *A.C. Clyburn*, 47 ECAB 153 (1995).

<sup>13</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 29 and June 28, 2010 are affirmed.

Issued: November 1, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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