



## **FACTUAL HISTORY**

The Office accepted that on February 12, 1994 appellant, then 53-year-old nurse, sustained a dislocation and acute tear of her left knee due to a fall at work. The Office also accepted that on August 23, 1994 she sustained a posterior cruciate ligament tear of her left knee due to another fall at work.<sup>1</sup> On October 16, 1995 appellant underwent posterolateral and cruciate ligament reconstructive surgery on her left knee.<sup>2</sup> On April 14, 1997 she underwent additional left knee surgery, including trimming the medial meniscus, chondroplasty of the medial femoral condyle and removal of hardware from the October 16, 1995 surgery. Both these procedures were authorized by the Office. In May 1997 appellant returned to limited-duty work for the employing establishment.

Appellant's compensation case was inactive after 1997 and the Office retired the case record to the Federal Record Center. In January 2006 appellant filed a claim alleging that she sustained a recurrence of disability on December 25, 2005 due to her February 12 and August 23, 1994 employment injuries.<sup>3</sup> She indicated that she experienced increased symptoms in her left knee and leg. On March 3, 2006 the Office requested that appellant submit additional factual and medical evidence in support of her claim.

On March 8, 2006 Dr. Jeffrey M. Colbert, an attending Board-certified orthopedic surgeon, stated that appellant reported that she had right knee pain and instability after she tripped and twisted her knee about 10 days prior.<sup>4</sup> Dr. Colbert diagnosed internal derangement of the right knee and "rule out torn medial meniscus versus chondromalacia patella." The findings of March 8, 2006 magnetic resonance imaging (MRI) scan testing of appellant's right knee showed a degenerative-type tear of the medial meniscus and fraying of the lateral meniscus. There was minimal thinning of patellar articular cartilage and a small suprapatellar effusion. The findings of March 14, 2006 MRI scan testing of her left knee showed an intact posterior cruciate ligament graft with surgical tunnels in the tibia and femoral condyle, medial and lateral meniscus tears and small suprapatellar effusion.<sup>5</sup>

On March 22, 2006 Dr. Colbert performed right knee surgery, including multiple chondroplasties of the patella and medial femoral condyle and removal of multiple loose bodies with synovectomy. There is no indication in the record that the surgery was authorized by the Office.

---

<sup>1</sup> The files for these two injuries have been combined into the current case file.

<sup>2</sup> As part of the surgery, holes were drilled and pins were inserted in appellant's tibia and femoral condyle. Graft material was harvested from both of appellant's knees.

<sup>3</sup> The record reveals that appellant returned to full-duty work for the employing establishment prior to filing her recurrence of disability claim. It does not appear that appellant stopped work on December 25, 2005.

<sup>4</sup> Appellant denied prior injury to her right knee.

<sup>5</sup> On March 16, 2006 Dr. Colbert indicated that MRI scan testing of appellant's left knee showed medial and lateral meniscus tears.

In a May 10, 2006 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after December 25, 2005 due to her February 12 or August 23, 1994 employment injury. The Office indicated that the reports of Dr. Colbert did not contain an opinion showing that appellant's current problems were related to her February 12 or August 23, 1994 employment injury. Appellant requested a review of the written record by an Office hearing representative. In a September 21, 2006 decision, the Office hearing representative affirmed the Office's May 10, 2006 decision.

In a letter dated March 29, 2007, appellant requested reconsideration of her claim. She submitted a September 25, 2006 report in which Dr. Mandelbaum, an attending Board-certified orthopedic surgeon, indicated that she reported that she had sustained a left knee injury in 1994 and underwent left knee surgery on October 16, 1995. He stated that appellant reported doing well until about a year prior when she developed right knee symptoms and about nine months prior when she developed left knee symptoms. Dr. Mandelbaum diagnosed degenerative changes in the left knee with medial and lateral meniscus tears and recommended diagnostic testing for the right knee.

In a May 8, 2007 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>6</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>7</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>8</sup>

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

The Office accepted that on February 12, 1994 appellant sustained a dislocation and acute tear of her left knee and that on August 23, 1994 she sustained a posterior cruciate ligament tear of her left knee. On October 16, 1995 appellant underwent posterolateral and cruciate ligament reconstructive surgery on her left knee. On April 14, 1997 she underwent additional left knee surgery, including trimming the medial meniscus, chondroplasty of the medial femoral condyle, and removal of hardware from the October 16, 1995 surgery. Both these procedures were authorized by the Office. In May 1997 appellant returned to limited-duty work for the

---

<sup>6</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>7</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

employing establishment and her compensation case was inactive after 1997. In January 2006 she filed a claim alleging that she sustained a recurrence of disability on December 25, 2005 due to her February 12 and August 23, 1994 employment injuries. Appellant had returned to full-duty work for the employing establishment prior to filing her recurrence of disability claim.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after December 25, 2005 due to her February 12 or August 23, 1994 employment injury. She submitted several March 2006 reports of Dr. Colbert, an attending Board-certified orthopedic surgeon, describing problems that primarily concerned her right knee. None of these reports contains an opinion that appellant's medical condition on or after December 25, 2005 was related to her February 12 or August 23, 1994 employment injury. On March 22, 2006 Dr. Colbert performed right knee surgery, but there is no indication that this surgery was necessitated by employment-related conditions.<sup>9</sup> Appellant's February 12 and August 23, 1994 employment injuries involved her left knee. The findings of March 14, 2006 MRI scan testing of appellant's left knee showed an intact posterior cruciate ligament graft with surgical tunnels in the tibia and femoral condyle, medial and lateral meniscus tears and small suprapatellar effusion. These findings do not show that appellant had a disabling condition related to her February 12 or August 23, 1994 employment injury.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>11</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability was causally related to the accepted employment injuries and, therefore, the Office properly denied her claim for compensation.

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

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>12</sup> the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show 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.<sup>13</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the

---

<sup>9</sup> In fact, the surgery might have been necessitated by a nonwork-related fall in late February 2006.

<sup>10</sup> The surgical tunnels in the tibia and femoral condyle constitute the sites where surgical hardware from appellant's October 1995 surgery was removed. There is no indication that appellant's authorized surgeries themselves caused any continuing problems.

<sup>11</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

<sup>12</sup> Under section 8128 of the Act, "[t]he 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).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

date of that decision.<sup>14</sup> 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 on the merits.<sup>15</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>16</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup>

### ANALYSIS -- ISSUE 2

In support of her March 2007 reconsideration request, appellant submitted a September 25, 2006 report of Dr. Mandelbaum, an attending Board-certified orthopedic surgeon, who indicated that appellant described her 1994 left knee injury and her October 1995 left knee surgery and reported doing well until about a year prior when she developed right knee symptoms and about nine months prior when she developed left knee symptoms. Although Dr. Mandelbaum diagnosed degenerative changes in the left knee with medial and lateral meniscus tears, his report is not relevant to the main issue of the present case, *i.e.*, appellant's recurrence of disability claim, because he provided no opinion that her knee problems were related to her February 12 or August 23, 1994 employment injury. As noted above, the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>18</sup>

Appellant has not established that the Office improperly denied her request for further review of the merits of its September 21, 2006 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after December 25, 2005 due to her February 12 or August 23, 1994 employment injury. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>14</sup> 20 C.F.R. § 10.607(a).

<sup>15</sup> 20 C.F.R. § 10.608(b).

<sup>16</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>17</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>18</sup> *See supra* note 17 and accompanying text.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' May 8, 2007 and September 21, 2006 decisions are affirmed.

Issued: December 19, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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