



## **FACTUAL HISTORY**

On August 5, 2010 appellant, then a 59-year-old physical science technician, filed a traumatic injury claim alleging that on July 26, 2010 he sustained a left knee injury as a result of compensating for a right knee injury sustained earlier in the evening. He filed a second traumatic injury claim for July 26, 2010 alleging a right knee strain while climbing stairs. "I wrecked my right knee."

In support of his claims, appellant submitted medical and factual evidence including an August 5, 2010 form listing that he had sustained an on-the-job injury and selected treatment by his treating physician, Dr. Lynn L. Staker, an orthopedic surgeon.

By letter dated September 29, 2010, OWCP informed appellant of the evidence required to support his claims. He was given 30 days to provide the requested information.

In response to OWCP's request, appellant submitted a September 2, 2010 magnetic resonance imaging (MRI) scan which diagnosed a left medial meniscus tear. In an August 4, 2010 report, Dr. Staker diagnosed chronic bilateral knee pain. He noted a 15-year history of problems with the right knee. Dr. Staker listed a history that appellant's left knee started giving him problems on July 27, 2010 while "doing some stairs." He noted that appellant twisted his right knee the wrong way and hurt his left knee. Appellant also submitted medical evidence regarding his knees from 1980, 1987 and 1991.

In an August 24, 2010 report, Dr. Staker performed a physical examination which revealed no left or right knee effusion, bilateral anterolateral tenderness and intact ligaments in both knees. A review of x-rays revealed that both knees were within normal limits.

In a September 7, 2010 report, Dr. Staker diagnosed bilateral patella chondromalacia and potential bilateral knee internal derangement. He reported that appellant sustained an employment injury on July 26, 2010 when he felt a sharp weakness in the right knee while walking up the dry dock. Dr. Staker also noted a history of a right knee injury some 15 to 30 years prior. Appellant related that he had been compensating with his right knee for left knee pain and giving out. Dr. Staker related that appellant continued to work following the injury and has had pain and swelling in right knee.

On September 14, 2010 Dr. Staker diagnosed right knee meniscus tear. Under history of the injury, he reported that appellant started having problems with his left knee on July 27, 2010 when he twisted while going down some stairs. Dr. Staker noted that appellant related having right knee problems for approximately 15 years and previously fell on his knee at work when he missed a step.

On November 3, 2010 OWCP received a September 9, 2010 MRI scan which revealed a right medial meniscus tear and reports by Dr. Staker dated October 6 and 19, 2010. Dr. Staker diagnosed left knee lateral meniscal tear and right knee medial meniscal tear.

By decision dated November 9, 2010, OWCP denied appellant's claims on the grounds that medical evidence was insufficient to establish a causal relationship between the diagnosed knee conditions and the July 26, 2010 employment incident.

Following the denial of his claim, OWCP received a November 2, 2010 report from Dr. Staker reiterating the diagnoses of bilateral meniscal knee tears. He noted that appellant had a history of right knee problems which resulted in his left knee starting to have problems. Dr. Staker stated that appellant related twisting his knee on July 27, 2010 while going down stairs.

On November 18, 2010 appellant requested a review of the written record by an OWCP hearing representative.

In a December 1, 2010 report, Dr. Staker diagnosed right knee medial meniscal tear and left knee lateral meniscal tear. He reiterated the history given in his prior reports. A review of x-ray interpretations revealed no degenerative arthritis in either knee while MRI scans revealed a left knee lateral meniscus tear and right medial meniscus tear.

By decision dated March 30, 2011, OWCP's hearing representative affirmed the November 9, 2010 denial of appellant's claim.

OWCP subsequently received reports dated April 13 to July 5, 2011 from Dr. Staker, who reiterated the diagnoses of bilateral meniscal tears. Dr. Staker noted that appellant had an incident on July 26, 2010 when going up some stairs.

On March 1, 2012 appellant requested reconsideration. He argued that the evidence established that his bilateral knee conditions were a direct result of the employment incident of July 26, 2010. Appellant submitted his statement regarding the injury, medical reports from Dr. Staker and a corrected August 4, 2010 report from Dr. Staker.

By decision dated March 30, 2012, OWCP denied further reconsideration of the merits.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>2</sup> OWCP's regulations provide that a claimant must: (1) show that 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 evidence not previously considered by OWCP.<sup>3</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at anytime on his own motion or on application.

<sup>3</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### ANALYSIS

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion. The issue on appeal is whether appellant met the requirements of 20 C.F.R. § 10.606(b)(3) to require OWCP to reopen his case for review of the merits. On appeal, counsel contends that the medical reports from Dr. Staker constitute new medical evidence and are sufficient to warrant a merit review.

In his March 1, 2012 application for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's argument was that his injury was employment related and he referenced his physician's reports, which were previously considered and addressed by OWCP.

The underlying issue in this case was whether appellant sustained bilateral knee injuries causally related to the accepted July 26, 2010 employment incident. That is a medical issue which must be addressed by relevant medical evidence.<sup>6</sup> A claimant may obtain a merit review of OWCP's decision by submitting pertinent new and relevant evidence. The only evidence received were reports from Dr. Staker dated April 13 to July 5, 2011 and a corrected August 4, 2010 report. While this medical evidence is new, the Board finds that it is not relevant to the issue of causal relationship as Dr. Staker did not address the cause of appellant's bilateral knee conditions. Dr. Staker's reports listed initial on-the-job injuries some 19 years prior and his treatment of appellant. The reports are essentially duplicative of the physician's prior reports of record. Evidence that repeats or duplicates that already of record does not constitute a basis for reopening a claim.<sup>7</sup> Thus, these reports do not constitute relevant and pertinent new medical evidence and are insufficient to require OWCP to reopen appellant's case for further review of the merits.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit pertinent new and relevant evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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<sup>4</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>5</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>6</sup> See *D.G.*, 59 ECAB 734 (2008); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>7</sup> *D'Wayne Avila*, 57 ECAB 642 (2006); *Jacqueline M. Nixon-Steward* 52 ECAB 140 (2000).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request to reopen his case for further review of the merits under 5 U.S.C. § 8128.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 30, 2012 is affirmed.

Issued: March 11, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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