

swelling of her leg, bruising and knee pain. The Office accepted appellant's claim for left knee contusion on March 25, 2003.

In a report dated March 17, 2003, appellant's attending physician, Dr. Thomas J. Wall, a Board-certified orthopedic surgeon, diagnosed a contusion of the right knee as well as "some anterior bilateral knee pain secondary to biomechanical problems of her pelvis and her feet." He requested authorization for orthotics.

In a letter dated April 3, 2003, the Office requested additional medical evidence from Dr. Wall regarding his request for orthotics for appellant.

Appellant submitted a written request to change physicians to Dr. Gary Purcell, a Board-certified orthopedic surgeon, dated April 1, 2003. By letter dated April 8, 2003, the Office denied authorization for a change of attending physicians, but allowed appellant a one-time consultation with Dr. Purcell. In response to Dr. Purcell's request, the Office authorized bilateral magnetic resonance imaging (MRI) scans of appellant's knees. The MRI scan of the right knee demonstrated advanced chondromalacia and the MRI scan of the left knee demonstrated Grade 2 chondromalacia with minimal joint effusion. Dr. Purcell submitted form reports dated April 28, May 23, July 31, September 10 and October 23, 2003 as well as the MRI scan dated May 15, 2003.

On October 23, 2003 Dr. Purcell noted that appellant described her knees as stiff and achy after sitting for a prolonged period of time, and noted on physical examination that she had no laxity. He stated, "discussed injections/arthroscopy." By letter dated November 24, 2003, the Office noted that Dr. Purcell had recommended surgery to treat appellant's "industrial injury" of contusion of bilateral knees. The Office requested a report explaining the need for surgery and its relationship to appellant's accepted employment injury. Dr. Purcell provided no additional medical evidence.

In a decision dated December 17, 2003, the Office denied the request for right knee arthroscopy finding that appellant had failed to provide the necessary medical evidence to establish the need for the requested procedure. Appellant requested reconsideration on December 29, 2003 and resubmitted the medical evidence of record. By decision dated January 12, 2004, the Office declined to reopen appellant's claim for consideration of the merits of her claim on the grounds that she failed to submit new evidence with her request.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of the Federal Employees' Compensation Act¹ provides that the Office shall provide a claimant with the services, appliances, and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from her injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad

¹ 5 U.S.C. §§ 8101-8193, 8103.

administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.²

The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relationship must include rationalized medical evidence which is based upon a complete factual and medical background, and shows a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS -- ISSUE 1

In this case, the Office accepted appellant's claim for a left knee contusion. In response to appellant's request for a change of physicians, the Office authorized a single consultation with Dr. Purcell, a Board-certified orthopedic surgeon. In a treatment note dated October 23, 2003, Dr. Purcell listed limited findings on physical examination and indicated that he had discussed the possibility of an arthroscopy with appellant. This report did not include a detailed history of injury, did not contain detailed physical findings and did not provide an opinion on the causal relationship between appellant's need for surgery and her accepted employment injury. The Office properly requested a supplemental report from Dr. Purcell addressing the defects in the medical evidence. Dr. Purcell did not respond and there is no other medical evidence addressing appellant's need for right knee surgery due to her employment injuries.

The record does not contain the sufficient rationalized medical opinion evidence regarding appellant's need for surgery. The Office's decision to deny such a request was reasonable. As there was no medical evidence establishing that surgery was likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation the Office properly denied appellant's request for surgery.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁴ the Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.⁵

² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

³ *Stella M. Bohlig*, 53 ECAB ____ (Docket No. 00-749, issued February 8, 2002).

⁴ 5 U.S.C. § 8128(a). Under section 8128(a) of the Act, 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 20 C.F.R. §§ 10.609(a) and 10.606(b).

ANALYSIS -- ISSUE 2

In this case, appellant requested reconsideration of the Office's December 17, 2003 decision on December 29, 2003. In support of her request for reconsideration, appellant resubmitted the medical evidence already included in the record at the time the Office issued the December 17, 2003 decision in duplicate consisting of Dr. Purcell's form reports dated April 28, May 23, July 31, September 10 and October 23, 2003 as well as the MRI scan dated May 15, 2003.

As the Office considered the same evidence submitted in support of appellant's request for reconsideration in reaching the initial decision, this evidence is not new and cannot be sufficient to require the Office to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that the Office properly denied appellant's request for surgery as there was no rationalized medical opinion evidence in the record supporting that such surgery was likely to cure or give relief from appellant's accepted employment injury. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on January 12, 2004 on the grounds that she failed to submit relevant new evidence in support of her request.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2004 and December 17, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member