



## **FACTUAL HISTORY**

On January 16, 2003 appellant, then a 32-year-old wildfire suppression specialist, filed a traumatic injury claim alleging that on January 10, 2003 he injured his right knee while walking. The Office accepted his claim for a right knee sprain.

In a report dated January 21, 2003, Dr. Julio Robla, appellant's attending orthopedic surgeon, indicated that appellant could return to work with no restrictions.

In a report dated January 9, 2004, Dr. Robla stated that he last examined appellant on January 20, 2003 for a right lateral plateau post-traumatic deformity of the right leg secondary to a fracture. His diagnosis on January 9, 2004 was end stage right knee post-traumatic arthritis.

On February 11, 2004 appellant filed a claim for a recurrence of disability on January 5, 2004 causally related to his January 10, 2003 employment injury.

By letter dated March 5, 2004, the Office advised appellant that he needed to provide additional evidence in support of his recurrence claim, including a detailed rationalized medical report explaining how his recurrence of disability was caused or aggravated by his January 10, 2003 employment injury.

By decision dated April 19, 2004, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability on January 5, 2004 causally related to his January 10, 2003 employment-related right knee sprain.

On June 14, 2004 appellant requested reconsideration.

In support of his request for reconsideration, appellant submitted evidence previously of record. He also submitted medical notes dated January 9, 2004 from Dr. Robla which were not previously of record.

By decision dated August 16, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence provided did not constitute relevant and pertinent evidence not previously considered by the Office and was insufficient to warrant further merit review.

## **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>1</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

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>2</sup>

Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>4</sup>

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

In a report dated January 21, 2003, Dr. Robla indicated that appellant could return to work with no restrictions. In a report dated January 9, 2004, Dr. Robla diagnosed end stage right knee post-traumatic arthritis and noted that he examined appellant on January 20, 2003 for a right lateral plateau post-traumatic deformity of the right leg secondary to a fracture.<sup>5</sup> However, the Office has not accepted either of these conditions as causally related to the January 10, 2003 employment-related right knee sprain. The Office advised appellant of the medical evidence needed to establish his claim for a recurrence of disability, including a rationalized report explaining how his recurrence of disability was causally related to his accepted right knee sprain, but such evidence was not forthcoming. The evidence does not establish that appellant sustained a recurrence of disability on January 5, 2004 causally related to his January 10, 2003 employment injury.

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

Section 8128(a) of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts on review, may end, decrease or increase the compensation previously awarded; or award compensation previously refused or discontinued.<sup>6</sup>

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office;

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<sup>2</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>5</sup> There is no indication in the record that appellant sustained a right leg fracture on January 10, 2003.

<sup>6</sup> 5 U.S.C. § 8128(a).

or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

In support of his request for reconsideration, appellant submitted evidence previously of record. He also submitted medical notes dated January 9, 2004 from Dr. Robla which were not previously of record. However, these January 9, 2004 notes contain essentially the same information as Dr. Robla provided in his January 9, 2004 narrative report which was previously submitted. Therefore, the January 9, 2004 notes do not constitute relevant and pertinent evidence not previously considered by the Office and are not sufficient to warrant further merit review.

As appellant did not 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 submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability on January 5, 2004 causally related to his January 10, 2003 employment injury. The Board further finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

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<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> 20 C.F.R. § 10.607(a).

<sup>9</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 16 and April 19, 2004 are affirmed.

Issued: March 18, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member