



stated that he was first aware of the condition in April 1993 and its relationship to his employment on February 7, 2003 when he stopped work. Appellant returned to duty on February 10, 2003. His supervisor, Carl Sandvik, noted that on January 21, 2004, after the submission of medical documentation, he had been provided limited duty.

Appellant also submitted a statement in reference to an injury sustained on August 17, 2003, referencing a claim he had filed on March 30, 2004, evidence regarding various job assignments, a number of emails and an attending physician's report dated January 20, 1993 in which Dr. Thomas C. McLaughlin, Board-certified in orthopedic surgery, advised that appellant could not work due to a torn lateral meniscus in his left knee. He also provided a May 5, 1993 impairment rating for appellant's left lower extremity. In an April 9, 1996 report, Dr. Vernon A. Maas, Board-certified in occupational medicine, noted that appellant had a permanent left knee injury and "consideration [should] be given to determining if accommodations can be made in his current job." A sedentary position was recommended. A July 11, 1996 employing establishment statement notes that appellant was to be placed on limited duty for a trial period of 90 days but that, if a permanent limited-duty position were not found, appellant would be removed from federal service due to his inability to perform the duties of his regular position. In an undated report, Dr. Myoung Ho Kim, an internist, noted that appellant had been under his care since October 10, 2001. He stated that appellant had no change in functional capacity since Dr. McLaughlin's May 4, 1993 assessment and provided restrictions to appellant's physical activity.

In a July 1, 2004 statement, Mr. Sandvik described appellant's job duties as a property custodian and stated that previously he had been in a sedentary position but that, due to a reduction-in-force, appellant had volunteered for the property custodian position which had greater physical requirements. Mr. Sandvik noted that on January 12, 2004 appellant provided medical documentation of his physical restrictions and was thereafter reassigned to a sedentary position as a computer system administrator.

By letter dated July 14, 2004, the Office noted that a 1992 claim had been denied and advised appellant of the type of evidence needed to support this claim, to include a comprehensive medical report to include a reasoned medical opinion regarding the cause of his condition. In an August 4, 2004 statement, he again described an August 17, 2003 employment injury. In an August 11, 2004 statement, Mr. Sandvik acknowledged that appellant injured his knee while moving equipment at work in August 2003.

By decision dated October 6, 2004, the Office denied the claim. The Office found that appellant had occupational exposure but that he had failed to submit medical evidence to show that this exposure caused an injury. On October 12, 2004 appellant requested reconsideration and submitted reports dated March 18 and May 17, 1996 in which Dr. Todd K. Ogawa, an internist, noted that he had sustained a left knee injury in August 1992 with subsequent surgical repair and provided restrictions to appellant's physical activity. Dr. Kim provided a number of fairly illegible treatment notes dating from October 5, 2001 to August 26, 2004 in which he advised that appellant had a painful left knee. A June 21, 2004 left knee x-ray was negative. In a form report dated August 12, 2004, Dr. Kim noted a history of right knee injury and pain and diagnosed knee sprain and osteoarthritis of the right knee which he advised was aggravated by heavy exercise at work in 2003. Appellant also submitted an April 2, 2004 memorandum in

which Mr. Sandvik requested that he submit additional medical evidence to document his requested accommodation.

In a decision dated January 25, 2005, the Office denied modification of the October 6, 2004 decision on the grounds that the medical evidence of record failed to establish causal relationship. The Office noted that the 1992 injury claim had been denied under Office file number 090372043. On December 2, 2005 appellant requested reconsideration stating that he injured his knee on August 6, 2003.<sup>1</sup> By decision dated December 29, 2005, the Office denied his reconsideration request.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>3</sup>

Office regulations at 20 C.F.R. § 10.5(ee) 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.<sup>4</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there

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<sup>1</sup> The reconsideration request also referenced Office file number 122035105. The instant case was adjudicated by the Office under file number 122025726.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB \_\_\_\_ (Docket No. 03-1157, issued May 7, 2004).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

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

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left knee injury causally related to factors of his federal employment. On his claim form he referenced a period when he was off work in February 2003 and later claimed that he injured his knee in August 2003. There is no medical evidence to support that appellant sustained a work-related left knee on either of these dates.

The only medical evidence of record which discusses a cause of appellant's knee condition in 2003 is Dr. Kim's August 12, 2004 report in which he diagnosed knee sprain and osteoarthritis of the right knee which he advised was aggravated by heavy exercise at work in 2003. Dr. Kim, however, provided no description of specific work factors or an explanation of the mechanism of injury which would support acceptance of this claim. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>9</sup> In this case, appellant submitted no such evidence. Therefore, appellant failed to meet his burden of proof to establish that he sustained an employment-related knee injury.

The Board also notes that appellant also implied that his light duty was improperly removed. The record in this case supports that the light duty provided appellant was an accommodation made by the employing establishment and was not due to an employment injury. This issue is, therefore, irrelevant to the instant claim.

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<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act<sup>10</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>11</sup> Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>12</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>14</sup> Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>15</sup>

## ANALYSIS -- ISSUE 2

In his letter requesting reconsideration, appellant merely reiterated his belief that he sustained an employment-related left knee condition. He, therefore, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>16</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional medical evidence and the merit issue in this case is whether he established that he sustained an employment-related left knee condition which requires the submission of medical evidence establishing that the claimed condition is causally related to the employment factors identified by the claimant.<sup>17</sup> Appellant, therefore, did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied his reconsideration request.

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<sup>10</sup> 5 U.S.C. §§ 8101-8193.

<sup>11</sup> 5 U.S.C. § 8128(a).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2).

<sup>13</sup> 20 C.F.R. § 10.608(b).

<sup>14</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>15</sup> *Kevin M. Fatzner*, 51 ECAB 407 (2000).

<sup>16</sup> 20 C.F.R. § 10.606(b)(2).

<sup>17</sup> *Solomon Polen*, *supra* note 5.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left knee condition in the performance of duty causally related to factors of employment. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 29 and January 25, 2005 be affirmed.

Issued: June 12, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board