



loading a van. He did not initially stop work. Dr. Kerry Biermann, a Board-certified family practitioner, treated appellant on July 12, 1998 and diagnosed possible right medial meniscus tear as well as right knee internal derangement. On August 25, 1998 Dr. Philip S. Harry, a Board-certified orthopedic surgeon, provided a CA-17 duty status form report diagnosing “medial joint line tenderness, suspect right knee medial meniscus tear.” The Office accepted appellant’s claim for right knee strain and the case was dormant until 2005.

In an October 11, 2005 letter to appellant, the Office noted that appellant had filed an occupational disease claim which had been developed separately<sup>1</sup> but that it appeared that he was actually alleging a claim for a recurrence of disability. Appellant filed a recurrence of disability claim on August 6, 2006. He alleged a recurrence of disability on March 17, 2005, due to his July 12, 1998 injury, for which he stopped work on April 1, 2005. Appellant noted that his job required him to perform strenuous activities although he was performing limited duty; he asserted: “My condition still hadn’t gotten to where it needed to be with the continuing bending, lifting heavy sacks and pushing containers into vans.” He claimed that his knee became swollen and painful when “pulling out containers from vans” and noted that he underwent a total knee replacement on May 22, 2006. Appellant was treated by Dr. Mark Manoso, an orthopedic surgeon, who released him to limited duty on September 7, 2006. He accepted a modified-duty job offer from the employing establishment on October 10, 2006.

In support of his recurrence of disability claim, appellant submitted a July 31, 2006 duty status report from Dr. Manoso who diagnosed “total knee replacement.” He also submitted numerous diagnostic testing reports noting his history of right knee arthroplasty. Appellant provided an October 16, 1998 diagnostic testing report from Dr. R.A. Youngberg, a Board-certified radiologist, revealing “mild tricompartmental degenerative changes of the knee.” In a January 3, 2006 diagnostic testing report, Dr. Raymond Rosenfeld<sup>2</sup> noted that appellant had “tricompartmental osteoarthritis” in his right knee. In a February 10, 2005 diagnostic testing report, Dr. David B. Mitchell, a Board-certified radiologist, noted “mild medial compartment degenerative changes with narrowing and osteophyte formation.”

On August 18, 2006 the Office requested additional information concerning appellant’s recurrence of disability claim. In response, appellant submitted treatment notes detailing his diagnostic testing and course of physical therapy. In a February 16, 2006 note, Dr. Jon C. Allison, a Board-certified internist, indicated that appellant had experienced bilateral knee pain over the previous 15 years. Appellant also provided an August 24, 2006 statement explaining that his job involved stress on his knee: “I am frequently required to carry up to 70 pounds and push/pull wheeled mail containers weighing up to 2,000 pounds. It requires standing, walking, bending, kneeling and squatting eight or more hours a day. This is done on runway-type concrete which has a much higher density and unforgiving effect [on] the joints of the body.”

In an August 25, 2006 report, Dr. Manoso noted that appellant underwent surgery on May 22, 2006 and a postsurgical “manipulation for a right total knee replacement” on

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<sup>1</sup> On October 11, 2005 the Office denied an occupational disease claim in a separate claim and noted that it appeared that appellant was alleging a recurrence of disability due to his July 12, 1998 injury.

<sup>2</sup> The Board was unable to ascertain Dr. Rosenfeld’s specialty based on the record.

June 26, 2006. He explained: “This surgery was necessary to correct an injury sustained along with post-traumatic arthritis to the right knee.” In a September 7, 2006 duty status report, Dr. Manoso diagnosed right total knee replacement and noted that appellant also had arthritis in his left knee.

On October 10, 2006 appellant accepted the employing establishment’s offer of a limited-duty job assignment.

In a November 20, 2006 report, an Office medical adviser reviewed the medical record and noted that appellant’s medical history included both the employment injury and degenerative joint disease. She referenced appellant’s diagnostic testing results, which revealed tricompartmental osteoarthritis and found that the medical evidence was not sufficient to establish that appellant’s “post-traumatic stress arthritis” resulted from the accepted condition.”

By decision dated November 22, 2006, the Office denied appellant’s recurrence of disability claim.

On December 6, 2006 appellant requested further review and asserted that his work duties caused osteoarthritis. He submitted an October 25, 2006 duty status report from Dr. Manoso diagnosing right total knee replacement on May 22, 2006. Appellant also provided a July 10, 2005 report from Dr. Wendy J. Boucher, an orthopedic surgeon, who noted treating appellant for a right meniscal tear and bilateral degenerative joint disease. Dr. Boucher noted that diagnostic testing revealed a large lesion to bone over the medial femoral condyle consistent with degenerative joint disease. She explained that appellant’s job “includes prolonged periods of time on his feet ambulating to deliver mail. This extended period of weight bearing and carrying heavy loads has caused him exacerbation of his symptoms.” Appellant also provided duplicate copies of diagnostic testing reports: a February 10, 2005 report from Dr. Mitchell and an October 16, 1998 report, also noting mild tricompartmental degenerative changes of the right knee from Dr. Youngberg. He also submitted an August 25, 1998 narrative report from Dr. Harry who noted that appellant injured his knee at work and diagnosed “suspect medial meniscus tear” and a duplicate copy of one page of Dr. Biermann’s July 12, 1998 report. Appellant also provided a May 22, 2006 operative report from Dr. Manoso detailing appellant’s arthroplasty procedure and diagnosing right knee osteoarthritis.

By decision dated January 18, 2007, the Office denied appellant’s request for reconsideration without conducting a merit review.

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

Section 10.5(x) of the Office’s regulations provides, in pertinent part:

“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. This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related

injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”<sup>3</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a light-duty position, or the medical evidence establishes that appellant is capable of carrying out a light-duty assignment, the claimant has the burden of establishing, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that he or she cannot perform such light duty. This burden requires the claimant to show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>4</sup>

To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>5</sup>

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

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability that was causally related to his accepted July 12, 1998 employment injury. The record reflects that he returned to a limited-duty job assignment following his total knee replacement. Although appellant asserted, in his recurrence of disability claim, that his job duties were “strenuous” despite his limited-duty assignment, he did not allege a change in the nature and extent of the injury-related condition. He did not assert, nor did he offer evidence to support that the employing establishment spontaneously increased his job duties or changed the nature of his assignment. The Board finds that appellant has not established a change in the nature and extent of the light-duty requirements.

In support of his recurrence of disability claim, appellant submitted numerous diagnostic testing reports and treatment notes, which did not address whether appellant’s condition was due to the 1998 employment injury. The Board has held that medical reports that do not address the question of causal relationship are of limited probative value on that issue.<sup>6</sup> Thus, appellant’s submission of diagnostic testing reports, form reports and treatment notes that do not address causal relationship are insufficient to establish that his claimed March 17, 2005 recurrence of

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<sup>3</sup> 20 C.F.R. § 10.5(x) (2002).

<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> *See Maurissa Mack*, 50 ECAB 498 (1999).

<sup>6</sup> *See, e.g., Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

disability was caused by his accepted right knee strain.<sup>7</sup> For example, Dr. Manoso's August 25, 2006 report noted appellant's status following his May 22, 2006 surgery but he provided no opinion regarding whether appellant's condition on and after March 17, 2005 was causally related to the accepted July 12, 1998 employment injury. Consequently, the Board finds that appellant has not established that he sustained a spontaneous recurrence of disability on or after March 17, 2005 that was causally related to his July 12, 1998 employment injury.

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

Under section 8128 of the Federal Employees' Compensation Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulations provides guidance for the Office in using this discretion.<sup>8</sup> The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”<sup>9</sup>

Section 10.608(b) provides that, when an application for review of the merits of a claim 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>10</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>11</sup>

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

The Board finds that the Office properly denied a merit review of appellant's claim. Appellant asserted that his employment caused osteoarthritis. However, causal relationship is an

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<sup>7</sup> On appeal and in support of his request for reconsideration, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>11</sup> *Annette Louise*, 54 ECAB 783 (2003).

issue that is medical in nature.<sup>12</sup> Thus, this assertion, by itself, is insufficient to show that the Office erroneously applied or interpreted a specific point of law. Furthermore, the Office had previously considered appellant's assertions that his current condition is employment related.<sup>13</sup> Appellant also did not otherwise advance a relevant legal argument not previously considered by the Office.

Appellant submitted duplicate copies of several diagnostic testing reports. Both Dr. Youngberg's October 16, 1998 report and Dr. Mitchell's February 10, 2005 report had previously been received into the record and considered by the Office. Additionally, the first page of Dr. Biermann's July 12, 1998 emergency report, containing the diagnosis of possible medial meniscus tear, was a duplicate copy of a report already received into the record and duly considered by the Office. Accordingly, the Board finds that these submissions, as they are duplicative of evidence already contained in the case record and duly considered by the Office, do not constitute a basis for reopening appellant's claim for a merit review.<sup>14</sup>

Appellant submitted several items not previously contained in the record. Dr. Harry's August 25, 1998 report noted that appellant had injured himself at work and diagnosed "suspect" medial meniscus tear. However, the report was contemporaneous with appellant's initial injury, which was accepted by the Office, and does not pertain to appellant's later recurrence claim, which he stated arose on March 17, 2005. Dr. Manoso's May 22, 2006 operative report and October 25, 2006 duty status report constituted new evidence, but did not offer an opinion on causal relationship and therefore was not relevant. In the May 22, 2006 operative report, Dr. Manoso diagnosed osteoarthritis and detailed the surgical procedures performed but did not provide a statement on causal relationship or otherwise address how the diagnosis of osteoarthritis was due to the July 12, 1998 work injury. His October 25, 2006 duty status report similarly did not address causal relationship. Because the reports did not provide new explanation or rationale and in fact did not address causal relationship at all, the Board finds that it is insufficient to require the Office to reopen the claim for a merit review. Dr. Boucher's July 10, 2005 report supported that appellant's condition, over time, exacerbated his symptoms. However, her report is not relevant because she did not address whether there was a spontaneous change in a medical condition resulting from the July 12, 1998 work injury.

Consequently, the Office properly denied appellant's request for a merit review.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained a recurrence of disability causally related to his accepted July 12, 1998 employment injury and that the Office properly denied a merit review of appellant's claim.

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<sup>12</sup> See *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

<sup>13</sup> See *Eugene F. Butler*, 36 ECAB 393, 398 (1984) (where the Board held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case).

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2007 and November 22, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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