

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lakeland, FL, Employer**

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**Docket No. 07-2159  
Issued: February 11, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 21, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 29, 2006 denying his occupational disease claim and a June 1, 2007 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that he sustained a left knee condition causally related to factors of his federal employment; and (2) whether the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On June 17, 2005 appellant, then a 54-year-old custodian, filed an occupational disease claim alleging that his left knee arthritis was aggravated by his work. He indicated that he was

first aware of his left knee condition in May 1993 and attributed it to his employment on May 26, 2005. Appellant did not stop work.

By letter dated July 5, 2005, the Office requested additional factual and medical information from appellant in support of his claim, including a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and employment factors.

In response, appellant submitted numerous medical reports and material which indicated that he had nonwork-related and preexisting severe degenerative arthritis in his left knee and degenerative joint disease in both knees. The record reflects that he had military service-connected left knee surgery and, upon discharge from the military in 1993, received a 30 percent service-connected disability which was subsequently increased in 2003. Appellant also underwent nonwork-related total right knee replacement surgery in July 2004 and returned to light-duty work at the employing establishment in September 2004.

By decision dated August 8, 2005, the Office denied appellant's claim on the grounds that he did not provide factual or medical evidence regarding the employment factors to which he attributed his condition.

On August 24, 2005 appellant disagreed with the Office's decision and requested an oral hearing, which was held on February 24, 2006. He also submitted additional factual and medical information predating his claim, which pertained to his preexisting knee conditions. Medical reports from a military medical facility dated February 14, March 29 and April 7, 2005 pertaining to appellant's knees were also submitted. By decision dated May 5, 2006, an Office hearing representative affirmed the denial of the claim on the grounds that the medical evidence was insufficient to establish that the claimed condition was caused or aggravated by the established work factors.

On August 22, 2006 appellant requested reconsideration. In support of his request, he submitted May 31 and August 9, 2006 reports from Dr. Bryan Edwards, an orthopedic surgeon, at the MacDill Air Force Base Hospital. In his May 31, 2006 report, Dr. Edwards advised that appellant had significant degenerative arthritis of both knees and underwent a right total knee replacement in 2005 and a left total knee replacement on May 5, 2006. He opined that appellant's left knee arthritis was exacerbated due to the right knee replacement and his job duties, which required extensive time on his feet. In his August 9, 2006 report, Dr. Edwards reiterated appellant's history of significant bilateral knee arthritis and subsequent total knee replacements. He further stated that the arthritis in appellant's left knee was exacerbated by his job requirements.

By decision dated November 29, 2006, the Office denied modification of its prior decision.

On May 19, 2007 appellant requested reconsideration. In an undated letter, he argued with the Office's interpretation of the medical evidence and its assessment of Dr. Edward's opinion. No new medical evidence was submitted.

By decision dated June 1, 2007, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and immaterial in nature and thus insufficient to warrant merit review.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</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;<sup>4</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>5</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>6</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>7</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

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

Appellant attributed the aggravation of his preexisting left knee condition to factors of his employment. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed condition and the identified employment factors.

In his May 31 and August 9, 2006 reports, Dr. Edwards noted appellant's history of significant bilateral knee arthritis and subsequent total knee replacements. In his May 31, 2006 report, he opined that appellant's left knee arthritis was exacerbated due to the right knee replacement and his job duties, which required extensive time on his feet. However, Dr. Edwards failed to provide any medical rationale explaining how or why appellant's job duties would aggravate his left knee condition to the point that a total knee replacement was necessary. Without further explanation, his statement that there was a causal relationship between appellant's left knee condition and his job duties is not sufficient to meet appellant's burden. Furthermore, as Dr. Edwards related the exacerbation of appellant's left knee condition in part to the right knee condition (a nonwork-related condition), his opinion is speculative and of little probative value to establish that the left knee condition was aggravated by the accepted employment factors.

In his August 9, 2006 report, Dr. Edwards generally stated that the arthritis in appellant's left knee was exacerbated by his job requirements. While he attributed appellant's condition to his employment duties, he failed to specifically identify the duties on which to offer any medical reasoning explaining how or why such duties lead to the exacerbation of appellant's left knee condition. Without medical rationale explaining the nature of the relationship between the exacerbation of appellant's preexisting left knee condition and the accepted employment factors, Dr. Edwards' report is not sufficient to meet appellant's burden of proof.

Appellant submitted no other medical evidence contemporaneous to the alleged aggravation of his left knee condition.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>11</sup> He must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale

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<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>11</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

in support of his or her opinion.<sup>12</sup> Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

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

Under section 8128(a) of the Act,<sup>13</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which 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) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>14</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>15</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>16</sup> The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup> While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>18</sup>

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

The Office denied appellant's claim on the grounds that the medical opinion evidence was insufficient to show that his left knee condition was aggravated by the identified employment factors. On May 19, 2007 he requested reconsideration of the Office's decision. Appellant maintained that the Office misinterpreted the medical evidence in his case. While he contended that the medical evidence showed his left knee condition was aggravated by employment factors, he did not submit any evidence to support his contention. Thus, appellant's argument does not have a reasonable color of validity such that it would warrant reopening the case for merit review.<sup>19</sup> Additionally, his opinion on causal relationship is not relevant to the underlying issue of whether the medical evidence establishes that his left knee condition was

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<sup>12</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.606(b)(2).

<sup>15</sup> 20 C.F.R. § 10.608(b).

<sup>16</sup> *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

<sup>17</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>18</sup> *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

<sup>19</sup> *Elaine M. Borghini*, 57 ECAB \_\_\_\_ (Docket No. 05-1102, issued May 3, 2006).

causally related to employment factors.<sup>20</sup> As the issue is medical in nature, it can only be resolved through the submission of probative medical evidence from a physician.<sup>21</sup>

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit pertinent new and relevant evidence not previously considered by the Office.<sup>22</sup> As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a left knee condition causally related to factors of his federal employment. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2007 and November 29, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 11, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>20</sup> See *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>21</sup> *Id.*

<sup>22</sup> 20 C.F.R. § 10.606(b).