

realized that it was aggravated by his employment on December 18, 2006. For 33 years, appellant's knees were subject to forceful and continuous use for at least eight hours per day. He sustained a left knee injury over 25 years previously, but had remained asymptomatic until July 23, 2004, when he injured his left knee while crawling through a hatch on an aircraft carrier. Appellant first learned that he had bilateral degenerative arthritis when he was examined by a second opinion physician, Dr. Roman Cham, a Board-certified orthopedic surgeon, on December 18, 2006.

The employing establishment stated that appellant was separated from his position on September 9, 2005 because no long-term light-duty position could be identified for him. Appellant previously injured his left knee on July 23, 2004, (File No. 132111513), accepted by the Office for sprains of the left knee and lateral collateral ligament. On March 7, 2007 the Office terminated appellant's wage-loss compensation for this claim based on the findings of Dr. Cham, who concluded that appellant had no residuals from the temporary aggravation of his preexisting moderate to severe arthritis.

The employing establishment provided two reports that Dr. Cham prepared for File No. 132111513. On August 31, 2006 Dr. Cham reported that appellant experienced transient knee complaints prior to his 2004 employment injury. On physical examination, he found that appellant was morbidly obese, weighing 460 pounds and walked with an antalgic gait using a cane. The range of motion in both of his knees was 0 to 95 degrees. The limitations were caused by appellant's advanced arthritis and obesity. Dr. Cham found pain and crepitus with the range of motion in his knees. He took x-rays that showed markedly advanced bilateral degenerative joint disease, left worse than right, with bone-on-bone collapse and evidence of subluxation of the joints. Dr. Cham diagnosed severe degenerative arthritis, left greater than right and a resolved contusion of the left knee. He found that appellant likely had a degenerative meniscus tear which was caused by his arthritis rather than his 2004 injury. Dr. Cham opined that the condition of appellant's knees was related to his "severe morbid obesity in excessive loads that were carried by his knees leading to cartilage overload and degeneration." On December 18, 2006 Dr. Cham stated that any aggravation of appellant's left knee condition was temporary and had ended. He found no evidence that the accepted injury accelerated appellant's condition as his right knee was almost as bad as his left knee and had not been involved in the employment injury.

On April 12, 2007 the Office requested that appellant provide additional factual and medical information regarding his occupational injury claim. On May 8, 2007 appellant was granted an extension until May 18, 2007 to submit the requested information. A response was not received in the allotted time.

By decision dated May 18, 2007, the Office denied appellant's claim. It accepted that he was exposed to the work conditions and activities he alleged; however, it found that the medical evidence did not demonstrate that these activities caused appellant's degenerative knee condition. The Office noted that Dr. Cham's report indicated that appellant's knee condition was primarily related to his weight.

On May 23, 2007 the Office received two undated letters from appellant providing additional information about his claim. Appellant stated that he worked for 20 years as a

sandblaster, performing high-pressure cleaning in the shop and on ships. At various times, his duties required working on his knees in very confined spaces, working on his hands and knees on hot, cold and rough surfaces, climbing through tunnels, climbing up and down bulkhead ladders and carrying bags of sand weighing 50 to 100 pounds. When sandblasting, appellant used a sweeping motion, which required him to twist from his knees while his feet were planted on the ground. The sandblasting hose and nozzle he carried up to 12 hours per day weighed 35 to 40 pounds. When working in the shop, he stood for prolonged periods. Other physical requirements of his employment included bending, squatting, stooping, crouching and walking on flat and steeply inclined surfaces. Appellant stated that he worked from 8 to 15 hours a day, five to seven days a week.

Appellant submitted medical treatment and progress notes from August 2004 to February 2007. None of the physicians' reports addressed appellant's preinjury working condition or activities. A February 13, 2007 physical therapy progress report stated that appellant's degenerative joint disease was due to a history of multiple knee injuries and work activities such as climbing ladders, kneeling and crawling.

By decision dated May 25, 2007, the Office denied further review of the merits of appellant's case. It found that the medical evidence was not sufficient to reopen his case.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

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;³ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the

¹ 5 U.S.C. §§ 8101-8193.

² *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁵ *Ernest St. Pierre*, 51 ECAB 623 (2000).

rationalized opinion of a physician.⁶ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty,⁸ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS -- ISSUE 1

Appellant has established that he has a diagnosed condition of the knees and that he was subject to the accepted employment conditions. The issue to be determined is whether he has established a causal connection between the two. The Board finds that appellant has not provided sufficient medical evidence to establish that his bilateral degenerative arthritis was caused or contributed to by the accepted factors of his federal employment.

The only medical evidence in the record at the time of the Office's May 18, 2007 decision were the reports of Dr. Cham, a Board-certified orthopedic surgeon. On August 31, 2006 Dr. Cham reported that appellant had a history of transient knee complaints prior to his 2004 injury. He took x-rays that showed markedly advanced bilateral degenerative joint disease, left worse than right, with bone-on-bone collapse and evidence of subluxation of the joints. On physical examination, Dr. Cham found that appellant was morbidly obese and walked with a limp, using a cane. Because of his advanced arthritis and obesity, the range of motion in both his knees was limited to 95 degrees. Appellant experienced pain and crepitus in the motion in his knees. Dr. Cham diagnosed severe degenerative arthritis, left greater than right and a resolved contusion of the left knee. He opined that appellant had a degenerative meniscus tear which was likely caused by his arthritis. Dr. Cham stated that the condition of appellant's knees was related to his "severe morbid obesity in excessive loads that were carried by his knees leading to cartilage overload and degeneration." On December 18, 2006 he stated that any aggravation of appellant's condition caused by his 2004 employment injury had ceased and that there was no evidence his injury had accelerated his arthritis. The Board finds that these reports do not establish a causal relationship between appellant's accepted employment factors and his diagnosed knee condition.

As the record contained no other medical opinion evidence establishing a connection between appellant's employment and his diagnosed condition, he failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.¹⁰ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations

⁶ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁰ 5 U.S.C. § 8128(a).

provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

Appellant sent two undated letters and some medical evidence in response to the Office's April 12, 2007 request for information. The Office received them on May 23, 2007, following the issuance of its decision denying his claim. The Board finds that appellant met none of the regulatory requirements for a review of the merits of the Office's May 18, 2007 decision.

The documents do not raise new arguments or present evidence that the Office erroneously applied or interpreted a specific point of law. He also did not advance any relevant legal arguments not previously considered by the Office. Appellant is thus, not entitled to further review on the merits of his case under the first two subsections of section 10.606(b)(2).¹³

The documents submitted by appellant provided details about his employment activities and the treatment of his knee condition. The Board finds that appellant's descriptions of his employment activities prior to his 2004 employment injury is repetitious or duplicative as his employment activities were already accepted by the Office and thus, do constitute a basis for reopening the case.¹⁴ The Board further finds that the new medical evidence is not relevant to the issue of whether appellant's accepted employment activities caused his degenerative knee condition. The physician's reports did not address appellant's preinjury work activities or address the relationship of his knee condition to his employment. The Board notes that one physical therapy report stated that appellant's employment-related climbing, kneeling and crawling were causes of his degenerative joint disease. However, the Board has held that physical therapy reports are of no probative value to the issue of causation because physical therapists are not physicians as defined under the Act.¹⁵ Because there was no relevant and pertinent new evidence for the Office to consider, appellant was not entitled to review under the third section of 10.606(b)(2).¹⁶

¹¹ 20 C.F.R. § 10.606(b)(2).

¹² 20 C.F.R. § 10.608(b).

¹³ 20 C.F.R. § 10.606(b)(2)(i) and (ii).

¹⁴ See *Eugene F. Butler*, 36 ECAB 393 (1984); see also *L.C.*, 58 ECAB ____ (Docket No. 06-1928, issued May 31, 2007).

¹⁵ *James Robinson*, 53 ECAB 417 (2002); see also 5 U.S.C. § 8101(2).

¹⁶ 20 C.F.R. § 10.606(b)(2)(iii).

The Board finds that, because appellant did not meet any of the statutory requirements for a review of the merits of his claim, the Office properly denied further merit review of appellant's claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a knee injury causally related to factors of his federal employment; and that the Office properly refused to reopen his case for further merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 25 and 18, 2007 are affirmed.

Issued: January 11, 2008
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