



## **FACTUAL HISTORY**

On March 21, 2007 appellant, then a 49-year-old carrier technician, filed a traumatic injury claim alleging that on February 12, 2007 while sitting at a table he got up to answer the telephone and hit his left knee on the broken table resulting in swelling and a complex left knee meniscal tear.

On April 6, 2007 the Office informed appellant that the evidence received was insufficient to support his claim and that additional information was needed, specifically a physician's opinion as to how appellant's injury resulted in a diagnosed condition. No information was received.

On May 10, 2007 the Office denied appellant's traumatic injury claim. It accepted that the claimed events occurred but found that there was no medical evidence of a diagnosed condition connected to the event.

On June 26, 2007 appellant requested reconsideration and submitted additional information. In a February 20, 2007 progress note, Dr. Craig M. Thomas<sup>2</sup> noted that appellant hit his right knee and leg at work about a week and a half before and his pain symptoms had not subsided. He found a moderate-sized effusion in the right knee and diagnosed derangement of posterior horn of medial meniscus but did not identify which knee. In a March 2, 2007 letter, Dr. Ramin M. Jeraili, Board-certified in orthopedic surgery, examined appellant's right knee in connection with a September 2003 twisting injury while at work and provided an impairment rating. A March 8, 2007 magnetic resonance imaging (MRI) scan report diagnosed complex tears of the extreme posterior medial meniscus of the left knee. In a March 26, 2007 progress note, Dr. Thomas reported that appellant had hit his left knee and leg at work about a week and a half before and that his pain symptoms had not subsided since then. He noted that appellant had right knee pain medially. Dr. Thomas noted upon inspection that appellant's left knee had a moderate-sized effusion and diagnosed derangement of posterior horn of medial meniscus. In an April 5, 2007 operative report, he described the procedure performed on the lower left extremity which consisted of a debridement of a tear of the medial, posteromedial horn, debridement of the lateral meniscus, and repair of a tear of the medial horn, chondromalacia and fraying lateral meniscus.

In an October 5, 2007 nonmerit decision, the Office denied appellant's request for reconsideration and refused to reopen the case for merit review on the grounds that no new and relevant evidence was submitted nor were any new legal arguments made.

## **LEGAL PRECEDENT -- ISSUE1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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

---

<sup>2</sup> Could not verify board status.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>8</sup>

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

Appellant alleged that he sustained a left knee condition when he stood up and hit his left knee and leg on a table on February 12, 2007. The Office accepted that the February 12, 2007 employment incident occurred as alleged. However, appellant did not submit any medical evidence to support his claim. In order to satisfy the second component that the employment incident caused a personal injury appellant must submit medical evidence demonstrating both that he sustained a condition and that this condition was caused by the employment incident. Appellant had not submitted medical evidence therefore he has not satisfied the second component necessary to establish fact of injury. 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 a causal relationship.<sup>9</sup> The Board finds that appellant has failed to submit sufficient medical evidence to support his claim.

---

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 5. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant’s specific employment factors. *Id.*

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

## LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>10</sup>

Section 8128(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 review on the merits.<sup>11</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>12</sup> Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.<sup>13</sup>

## ANALYSIS -- ISSUE 2

In the instant case, appellant has not met any of the criteria for reopening his case for review of the merits. Merit review was denied by the Office on the grounds that he did not submit new and relevant medical evidence or raise any new legal argument. Appellant did submit medical evidence, but evidence is only considered to be new and relevant if it addresses the issue of the case. The issue in this case is whether his employment incident, hitting his knee on a table, caused a personal injury. Appellant submitted reports from Dr. Thomas and Dr. Jebraili and an MRI scan report. While the evidence establishes that he has a derangement of posterior horn of the medial meniscus and tears of the extreme posterior medial meniscus none of the reports offer an opinion as to the cause of these conditions. 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.<sup>14</sup> To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.<sup>15</sup> As none of the reports offer an opinion on causal relationship they are not considered to be new and relevant evidence to require the Office to review the merits of the case. Additionally appellant did not provide any new legal arguments not previously considered by the Office, nor show that the

---

<sup>10</sup> 20 C.F.R. § 10.606(b)(2)(i-iii).

<sup>11</sup> 20 C.F.R. § 10.606(b)(2).

<sup>12</sup> *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

<sup>13</sup> *Kevin M. Fatzner*, 51 ECAB 407 (2000).

<sup>14</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>15</sup> *D.D.*, 57 ECAB 734 (2006), *Calvin E. King*, 51 ECAB 394 (2000).

Office incorrectly applied a specific point of law. As he has not met any of the requirements for reopening his case for merit review under section 8128(a) of the Act, the Office properly denied reconsideration of his case on the merits.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a traumatic injury in the performance of duty. The Board also finds that the Office properly denied reconsideration on the merits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 5 and June 26, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 3, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board