



activities caused her condition on December 1, 2008. Appellant did not stop work but began working limited duty.

In a December 15, 2008 duty status report, Dr. Sankara Rao Kothakota, a Board-certified orthopedic surgeon, diagnosed internal derangement of both knees. He noted that appellant's work involved prolonged standing and riding on a power ox. Dr. Kothakota advised that appellant was able to return to work on December 8, 2009 with restrictions.

On January 6, 2009 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. A December 15, 2008 report from Dr. Kothakota noted constant aching in both knee joints and pain and tenderness along the patellofemoral joint. He found that the medial and lateral joints were tender and stable with no effusion. In a January 8, 2009 report, Dr. Kothakota noted serious problems with both knee joints, left more than right. He also noted some grinding sensation and things moving inside the knee as well as joint line tenderness. Dr. Kothakota found possible medial meniscal injury on both sides and recommended a magnetic resonance imaging (MRI) scan of both knees. In an undated report, he opined that appellant sustained an injury to both knees when she was on a machine called an "ox" which was "apparently ... a carrier of mail ... and apparently ... constantly jerks. Apparently, [appellant] has been hitting against her knees on both of them and she started having severe pain." On examination, Dr. Kothakota found that both knee joints were tender along the infrapatellar tendon with pain along the patellofemoral joint. He also found tender medial and lateral joints. Dr. Kothakota found no evidence of any calf tenderness or deep venous thrombosis. He indicated that x-rays showed mild narrowing of joint space in the medial and lateral compartments and an overall normal musculoskeletal examination. Dr. Kothakota diagnosed internal derangement and patellofemoral contusion in both knee joints. Accompanying this report was a narrative December 15, 2008 treatment note in which Dr. Kothakota advised that appellant began light duty on December 8, 2008 and was no longer working on the ox machine but still had constant aching pain in both knee joints.

In a February 19, 2009 decision, the Office denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition was related to the accepted work-related activities.

Appellant requested reconsideration on March 8, 2009. In a statement of the same date, she noted sustaining injury to both knees on December 1, 2008. Appellant described her job duties and indicated that they required having her knees bent against a metal plate continuously. She also noted that she would submit photographs of the equipment on which she worked. Appellant requested approval of her reconsideration request so that she could obtain more medical treatment. In an undated statement, she reiterated her job description and provided photographs of her work area.

In a March 18, 2009 decision, the Office denied appellant's reconsideration request finding that the evidence submitted was irrelevant to the present issue and that no new legal arguments were raised.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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>1</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.<sup>2</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>3</sup>

## ANALYSIS -- ISSUE 1

The record supports that appellant's position as a mail handler power equipment operator requires standing and riding on equipment. However, she submitted insufficient medical evidence to establish that she has a diagnosed bilateral knee condition causally related to these employment activities.

Dr. Kothakota's undated report provides some support for causal relationship as he stated that appellant injured both knees when she was on a machine called an "ox" which "apparently ... constantly jerks" such that appellant "apparently ... has been hitting against her knees" on the ox and began having severe pain. He noted findings and diagnosed internal derangement and patellofemoral contusion in both knee joints. However, the Board finds that this is insufficient to

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<sup>1</sup> *J.E.*, 59 ECAB \_\_\_ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>3</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

establish appellant's claim as the physician's opinion is couched in speculative terms<sup>4</sup> regarding how any injury occurred and he did not otherwise provide medical rationale<sup>5</sup> to explain how appellant's work on the ox machine caused or aggravated the diagnosed contusions and internal derangement. Dr. Kothakota did not, for example, unequivocally explain the medical reasons why working on the ox would cause or aggravate internal derangement of appellant's knees.

Other reports from Dr. Kothakota did not specifically address whether employment factors caused or aggravated a diagnosed medical condition. The Board has held that medical evidence that 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>6</sup> For example, Dr. Kothakota's January 8, 2009 report noted serious problems with both of appellant's knee joints, including a grinding sensation and joint line tenderness but he did not provide a reasoned opinion on causal relationship or otherwise discuss how standing and riding on a power ox contributed to appellant's knee condition.

For these reasons, appellant did not submit sufficient medical evidence to establish that she has a bilateral knee condition caused or aggravated by her employment activities.

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

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> Section 10.608(b) of Office regulations provide 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>8</sup>

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

In support of her reconsideration request, appellant submitted two statements that described her job duties and noted how they contributed to her knee condition. Appellant's statement also noted that she needed approval of her reconsideration request so that she could obtain further medical treatment. She also submitted several photographs of her work area. However, appellant did not submit any additional medical evidence. This is particularly important as the underlying issue is medical in nature regarding whether appellant has submitted

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<sup>4</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

<sup>5</sup> See *supra* note 3.

<sup>6</sup> *S.E.*, 60 ECAB \_\_\_ (Docket No. 08-2214, issued May 6, 2009).

<sup>7</sup> *D.K.*, 59 ECAB \_\_\_ (Docket No. 07-1441, issued October 22, 2007).

<sup>8</sup> *K.H.*, 59 ECAB \_\_\_ (Docket No. 07-2265, issued April 28, 2008).

sufficient medical evidence establishing that her employment duties caused or aggravated her diagnosed knee condition. Therefore, appellant's statements and photographs are not relevant to the underlying medical issue and do not constitute relevant or pertinent new evidence not previously considered by the Office.<sup>9</sup> Furthermore, she did not otherwise show that the Office erroneously applied or interpreted a point of law nor did she advance a new and relevant legal argument. Consequently, the Office properly denied appellant's reconsideration request without a merit review.

On appeal, appellant asserts that her claim should be accepted and she submitted new factual and medical evidence regarding her claim. However, as noted, she has not met her burden of proof in establishing her claim because the relevant medical evidence in the record at the time of the Office decision provides insufficient reasoning to explain how work factors, caused a diagnosed medical condition. The Board further notes that it may not consider new evidence on appeal as its review of the claim is limited to the evidence that was in the record at the time the Office issued its final decision.<sup>10</sup>

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty. The Board also finds that the Office properly denied appellant's request for reconsideration without a merit review.

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<sup>9</sup> See *E.M.*, 60 ECAB \_\_\_\_ (Docket No. 09-39, issued March 3, 2009) (where the Board held that new evidence submitted upon a reconsideration request that does not address the pertinent issue is not relevant evidence); *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>10</sup> 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated March 18 and February 19, 2009 are affirmed.

Issued: January 20, 2010  
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