



Clinical notes dated July 21, 2008 listed that on July 18, 2008 appellant exited a tractor and injured his left knee. The diagnosis was moderate degenerative arthrosis and a small suprapatellar effusion probably due to loose bodies. In a July 29, 2008 report, Dr. H. Boyd Watts, an attending Board-certified orthopedic surgeon, noted that appellant twisted his left knee on July 18, 2008. He had a history of prior left knee surgery. Dr. Watts provided findings on physical examination and diagnosed degenerative changes based on an x-ray. He noted a cartilaginous loose body near the medial side of the left knee on physical examination.

By decision dated September 19, 2008, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained a left knee injury on July 18, 2008.

On October 8, 2008 appellant requested a review of the written record. In an October 2, 2008 note, Dr. Watts stated that the left knee injury sustained on July 18, 2008 appeared to be an acute injury that caused an articular fracture, a medial meniscus tear or something loose in the medial side of the joint. Arthroscopic surgery was discussed. On October 2, 2008 appellant underwent left knee arthroscopic surgery with removal of a loose body fragment, partial synovectomy and debridement of the medial femoral condyle.

On October 8, 2008 Lonnie Barrier, a supervisor, stated that on July 18, 2008 appellant fell and twisted his left knee when the backhoe door broke and swung open too far.

By decision dated January 9, 2009, an Office hearing representative affirmed the September 19, 2008 decision.

On April 29, 2009 appellant requested reconsideration. He did not submit any additional evidence.

By decision dated June 23, 2009, the Office denied modification of the January 1, 2009 decision.

On July 15, 2009 appellant requested reconsideration. He described how the July 18, 2008 incident involving the backhoe occurred.

By decision dated August 3, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>1</sup> Second, the employee must submit

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<sup>1</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

medical evidence to establish that the employment incident caused a personal injury.<sup>2</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of 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 claimant.<sup>3</sup>

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

The Office accepted that the July 18, 2008 backhoe incident occurred. It denied appellant's claim on the grounds that the medical evidence did not establish that his left knee condition was caused by the July 18, 2008 backhoe incident.

The July 21, 2008 clinical notes listed the incident at work and provided a diagnosis of moderate degenerative arthrosis and a small suprapatellar effusion probably due to loose bodies. The notes did not explain how the left knee condition was related to the July 18, 2008 incident. Therefore, they do not establish that appellant sustained a left knee condition on July 18, 2008 while in the performance of duty.

In a July 29, 2008 report, Dr. Watts noted that appellant twisted his left knee on July 18, 2008. He obtained a history of prior left knee surgery but no specific details were provided, such as the surgical dates and procedures or what caused the need for surgery. Dr. Watts provided findings on physical examination and diagnosed degenerative changes based on an x-ray. He diagnosed a possible cartilaginous loose body near the medial side of the left knee on physical examination. Dr. Watts did not explain how the degenerative changes or cartilaginous loose body were related to the July 18, 2008 work incident. Therefore, his report is not sufficient to establish that appellant sustained a work-related left knee condition on July 18, 2008. On October 2, 2008 Dr. Watts stated that appellant's left knee injury sustained on July 18, 2008 appeared to be an acute injury that caused an articular fracture, a medial meniscus tear or something loose in the medial side of the joint. Arthroscopic surgery was discussed. Dr. Watts provided three possible diagnoses, not one firm diagnosis for the July 18, 2008 backhoe incident. Further, he did not explain how any of the diagnoses were caused or aggravated by the July 18, 2008 employment incident. The Board finds that the medical

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<sup>2</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

evidence of record is insufficient to establish that appellant sustained a left knee injury on July 18, 2008.

On appeal, appellant contends that his claim should be accepted because he described the July 18, 2008 incident accurately. How the July 18, 2008 incident occurred is not at issue. The Office accepted that the July 18, 2008 incident occurred. It denied his claim on the grounds that the evidence did not provide sufficient medical opinion explaining how the incident was competent to cause or contribute to his left knee symptoms.

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

Section 8128(a) of the Federal Employees' Compensation Act<sup>4</sup> does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>5</sup>

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>6</sup> 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> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>9</sup>

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

Appellant requested reconsideration and described how the July 18, 2008 backhoe incident occurred. He did not submit any additional medical evidence. As the issue in the case is medical in nature, whether appellant sustained a left knee medical condition as a result of the July 18, 2008 backhoe incident, his description of how the incident occurred does not constitute relevant and pertinent new evidence not previously considered by the Office. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a

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<sup>4</sup> 5 U.S.C. § 8128(a).

<sup>5</sup> *Annette Louise*, 54 ECAB 783, 789-90 (2003).

<sup>6</sup> Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> *Id.* at § 10.607(a).

<sup>9</sup> *Id.* at § 10.608(b).

relevant legal argument not previously considered or submit relevant and pertinent new evidence not previously considered. The Office properly denied his request for reconsideration.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a left knee injury on July 18, 2008 while in the performance of duty. The Board further finds that the Office did not abuse its discretion in denying his request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 3 and June 23, 2009 are affirmed.

Issued: July 16, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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