



## **FACTUAL HISTORY**

On February 6, 2006 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim, alleging that she injured her left knee when she slipped and fell on February 3, 2006. She stopped work that day and returned to modified duty on February 17, 2006. On May 22, 2006 the Office accepted that she sustained employment-related sprains and strains of the left knee and leg and a left leg contusion. On October 24, 2008 appellant submitted claims for compensation for the period September 6 to October 24, 2008.

By letter dated October 29, 2008, the Office informed appellant of the evidence needed to develop her claim for compensation. Appellant responded that on May 7, 2007, while throwing mail, her knees started to hurt, the right more than the left. She recently had a right total knee arthroscopy (TKA) and developed a subsequent foot drop, causing a delay in her return to work. Appellant submitted recurrence of disability claims on January 5 and February 10, 2009, alleging that walking and carrying flats of mail caused right knee pain and swelling, and that she fell on both knees on February 3, 2006.

In a February 10, 2006 report, Dr. Giri T. Gireesan, a Board-certified orthopedic surgeon, noted that appellant fell at work on February 3, 2006 and injured her left knee. She provided examination findings of the left knee, diagnosed contusion to the left knee and post-traumatic orthosis, and advised that she could return to work on February 15, 2006. On March 29, 2006 Dr. Gireesan diagnosed contusion to both knees with a combination of osteoarthritis, accounting for bilateral knee pain. On June 1, 2006 she advised that appellant's bilateral knee contusions had resolved.

In a March 7, 2007 report, Dr. Jay Brooker, a Board-certified orthopedic surgeon, noted a history that appellant fell a year previously and had since experienced intermittent pain in the right knee after sustaining injury to the left knee. This was a result of overuse of the right knee to compensate for left knee pain. X-ray findings noted moderately severe degenerative changes in the right knee. Dr. Brooker found mild effusion and crepitus on examination, and diagnosed exacerbation of degenerative arthritis. He performed a right TKA on September 5, 2008. By report dated November 5, 2008, Dr. Brooker noted that appellant had preexisting arthritis when she fell on February 3, 2006. This incident, plus additional duties as a letter carrier, caused a significant exacerbation such that she required surgery. In a December 3, 2008 report, Dr. Brooker explained that due to her left knee injury, she overused her right knee, which also led to the need for surgery. On February 16, 2009 he reported that appellant had a postoperative complication of foot drop and that she could not return to full-time work.

In a February 16, 2009 report, Dr. David H. Garelick, Board-certified in orthopedic surgery and an Office medical adviser reviewed the medical record. He reported that Dr. Gireesan had discharged appellant from care on June 1, 2006. While the right knee procedure was surgically and medically indicated, appellant's right knee condition was not a consequential injury of the accepted left knee condition but more likely due to degenerative knee arthritis caused by her morbid obesity than anything employment related. Appellant was five feet tall and weighed over 250 pounds.

By decision dated March 16, 2009, the Office denied the claim finding that the medical evidence was insufficient to establish that appellant sustained disability on March 7, 2007 or September 5, 2008 as a consequence of the February 3, 2006 employment injury. It advised appellant that, as Dr. Brooker indicated that her everyday work activities could have exacerbated her degenerative joint disease of the knees, she could file a new occupational disease claim.

On May 21, 2009 appellant requested reconsideration. She asserted that the condition of her knees slowly deteriorated after the February 2006 fall until she had to have surgery on her right knee. Appellant submitted an August 17, 2006 x-ray of the right knee that demonstrated tricompartmental degenerative joint disease. In an August 17, 2006 report, Dr. Girma Assefa, a Board-certified internist, noted a history that appellant fell at work in February, landing on her left knee, and complained of intermittent right knee pain. Examination demonstrated mild right knee crepitus. Dr. Assefa diagnosed degenerative joint disease of the right knee. On February 6, 2007 he diagnosed severe degenerative joint disease of the right knee, and on September 22, 2008 noted that appellant had developed foot drop postsurgically. By report dated March 16, 2009, Dr. Brooker reported that appellant was still very sensitive at the extreme of flexion and still needed outpatient therapy, and on April 9, 2009, he advised that she could return to full duty with no restrictions.

In a merit decision dated January 21, 2010, the Office denied modification of the March 16, 2009 decision, finding that the evidence submitted was insufficient to establish that appellant sustained disability due to her 2006 injury.

Appellant again requested reconsideration and resubmitted Dr. Brooker's March 16, 2009 report. In a nonmerit May 13, 2010 decision, the Office denied appellant's request for reconsideration.

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

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of

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<sup>2</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>3</sup> *Id.*

this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>4</sup>

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

The Board finds that appellant has not established disability on September 6, 2008 causally related to the accepted sprains and strains of the left knee and leg and left leg contusion. Appellant did not establish that the nature and extent of her injury-related condition changed on September 6, 2008 so as to prevent her from continuing to perform her limited-duty assignment. She stopped work on September 6, 2008 to undergo surgery on her right knee. A right knee condition has not been accepted as employment related. The medical evidence is insufficient to establish that her right knee condition was caused by or is a consequence of her accepted left knee injury.<sup>5</sup>

Dr. Assefa diagnosed degenerative joint disease of the right knee which became more severe over time; but he did not provide an opinion as to the cause of the diagnosed condition or address whether appellant could perform her modified duties. 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> Dr. Gireesan noted on March 29, 2006 that appellant had contusions to both knees with a combination of osteoarthritis that accounted for bilateral knee pain. On June 1, 2006 he advised that her bilateral knee contusions had resolved. Dr. Gireesan's reports are insufficient to establish that appellant became totally disabled on September 6, 2008, more than two years after she was dismissed from care, due to her 2006 injury. Dr. Garelick, the Office medical adviser, advised that the degenerative arthritis in appellant's right knee was not a consequence of the February 3, 2006 employment injury or her accepted left knee injury but was more likely due to degenerative knee arthritis caused by her morbid obesity. He did not support causal relation.

The Board finds that Dr. Brooker's reports are insufficient to establish appellant's claim as he did not provide sufficient medical rationale explaining the mechanics of how her right knee condition was caused by the February 3, 2006 employment injury. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>7</sup> Dr. Brooker advised on March 7, 2007 and

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<sup>4</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, *The Law of Workers' Compensation* § 1300; see *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>6</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

December 3, 2008 that appellant's right knee condition, which led to the need for surgery, was caused by overuse due to the employment-related knee injury. The record does not support that residuals of the left knee injury continued after June 1, 2006 when Dr. Gireesan advised that the contusion had resolved. Neither Dr. Assefa nor Dr. Brooker provided physical findings with regard to appellant's left knee. Dr. Brooker advised on November 5, 2008 that appellant's preexisting arthritis was exacerbated by the February 3, 2006 fall which, with her regular work duties, caused the need for surgery. The Board finds Dr. Brooker's reports are equivocal as he did not clearly explain how appellant's right knee condition was caused by overuse due to the accepted left knee condition, was caused by the February 3, 2006 fall that exacerbated her preexisting arthritis, or caused by her regular work duties. Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>8</sup>

Appellant did not assert that she was working outside her restrictions or that her modified assignment changed, and the record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted left lower extremity conditions.<sup>9</sup>

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence.<sup>10</sup> The record does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the February 3, 2006 employment injury.<sup>11</sup>

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

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>12</sup> Section 10.608(a) of the Code of Federal Regulations provide that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>13</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (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.<sup>14</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the

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<sup>8</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>9</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>10</sup> *Beverly A. Spencer*, *supra* note 7.

<sup>11</sup> *Cecelia M. Corley*, *supra* note 9.

<sup>12</sup> 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.608(a).

<sup>14</sup> *Id.* at § 10.608(b)(1) and (2).

Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>15</sup>

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

On March 14, 2010 appellant checked on an appeal request form that she was requesting reconsideration and resubmitted Dr. Brooker's March 16, 2009 report. She raised arguments. Appellant therefore did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, she was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>16</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), Dr. Brooker's March 16, 2009 report had previously been considered in the Office's January 21, 2010 merit decision, and evidence that repeats or duplicates evidence of record has no evidentiary value and does not constitute a basis for reopening a case.<sup>17</sup> Appellant thus did not submit relevant and pertinent new evidence such that a merit review of the claim was warranted.

As appellant did not show that the Office erred in applying a point of law, advance a relevant legal argument not previously considered, or submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied her reconsideration request.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained a recurrence of disability and that the Office properly refused to reopen his case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>15</sup> *Id.* at § 10.608(b).

<sup>16</sup> *Id.* at § 10.606(b)(2).

<sup>17</sup> *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>18</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 13 and January 21, 2010 be affirmed.

Issued: May 4, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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