

representative affirmed the April 23, 2010 decision. On August 13, 2010 appellant requested reconsideration, contending that he continued to suffer residuals related to his accepted right knee condition.

On September 2, 2010 appellant submitted numerous medical reports, including a December 24, 2008 report from Dr. Sepehr Khonsari, a Board-certified physiatrist, who noted appellant's complaints of increased right knee pain and occasions where his right knee would "give out." An MRI scan of the right knee showed a posterior horn of the medial meniscus tear and anterior curiae ligament partial tear, as well as chondromalacia patella. Physical examination revealed right knee tenderness over medial joint line; negative McMurray and negative Lachman's.²

Appellant also submitted an April 27, 2009 report from Dr. Sunny Cheung, a treating physician. Dr. Cheung diagnosed mild right knee degenerative joint disease, noting that appellant had sustained a right knee injury in 1981 due to heavy lifting and twisting of his right knee. He stated that appellant had had been having lateral pain since undergoing an arthroscopic patella debridement. The pain was worse after standing about 30 minutes or squatting. Appellant was able to walk only about 15 minutes before have pain and experiencing vague "locking." On examination, appellant demonstrated some lateral joint tenderness and ambulated with a cane.

Appellant submitted notes dated March 1, 2010 from Dr. Ronald K. Takemoto, a Board-certified physiatrist, who diagnosed right knee degenerative joint disease and provided examination findings, which revealed right knee tenderness over the medial joint line. Dr. Takemoto stated that appellant's work status was sedentary regarding his knee injury.

In an October 28, 2010 decision, OWCP denied modification of the August 12, 2010 decision on the grounds that evidence was insufficient to establish that appellant's current right knee condition was causally related to the 1981 injury. In discussing the evidence submitted, the claims examiner stated that appellant had submitted numerous copies of documents already of record and referenced Veterans Administration medical reports/notes from September 4, 2009 to July 7, 2010 describing treatment for his neck and back, as well as post-traumatic stress disorder. He did not, however, discuss or indicate that he had reviewed the above-referenced reports dated December 24, 2008, April 27, 2009 and March 1, 2010, which addressed appellant's right knee condition.³ In fact, the claims examiner did not identify any reports that addressed appellant's right knee condition.

The Board finds that this case is not in posture for a decision, as OWCP failed to review and consider all evidence of record prior to issuing its October 28, 2010 decision. Therefore, the case must be remanded for a merit review of all evidence received and an appropriate final decision.

² Dr. Khonsari also discussed appellant's chronic spinal degenerative disc disease.

³ As noted, OWCP had an obligation to carefully review all evidence presented. This obligation was not obviated by the submission of numerous documents, many of which may ultimately be determined to be duplicative, cumulative or irrelevant.

Board precedent requires OWCP to review all evidence submitted by a claimant and received prior to the issuance of its final decision.⁴ Based upon the claims examiner's discussion of the evidence, it is clear that he did not review or consider the December 24, 2008, April 27, 2009 and March 1, 2010 reports from appellant's physicians prior to issuing its final decision. These reports were properly before OWCP in this case, and it was required to review and consider them prior to issuing its final decision. The Board, therefore, will set aside the October 28, 2010 decision and remand the case to OWCP for consideration of the evidence that was properly submitted by appellant prior to its final decision and the issuance of a *de novo* decision on the merits of the claim.

IT IS HEREBY ORDERED THAT the October 28, 2010 decision in File No. xxxxxx439 is set aside and the case is remanded for action consistent with the terms of this order.

Issued: November 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁴ See *William A. Couch*, 41 ECAB 548 (1990).